Supreme Court, U.S.
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No. 85-2166

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

Robert L. Middleton and Marian S. Middleton,

Petitioners,

v.

State of California et al,

Respondents.

On a Writ of Certiorari to the
Court of Appeal of the State of California
in and for the Third Appellate District

PETITION FOR WRIT OF CERTIORARI

REPRINTED COPY

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151PP

Questions Presented

A. Are the Statutes valid as adopted in 1974 pursuant to Proposition 7 wherein the fundamental laws of admission to statehood were unilaterally diluted by the sovereign state of California from their original compact with the sovereign United States?

B. Does the scheme adopted and enforced by the state of California to finance local general services deny anyone, or his property, the federal constitutional rights of due process and equal protection and/or equal privileges and immunities where it disallows a local tax based on present net income above the subsistence level?

C. Likewise, in this scheme to finance local general services without a general tax on income, are anyone's federal constitutional rights violated by this scheme which empowers local governments:

(1) to force private business owners to pay a fee for the right to be in business omitting

those with a possessory interest in the business; (2) to take possession of private things in action for a fee (sales tax) without a consideration of the public necessity; (3) to extort a fee for performing a general service; and (4) in the building permit fee process to extort a fee from future owners of land and improvements (special properties)?

D. When, as in these petitioners' case, local government furnishes the special service of fire and police protection to special properties [private land, improvements, equipment, livestock, crops, leases to government land and equipment, and leases of the rights to extract minerals, oil and gas] petitioners' petition poses the question: are an owner's United States 5th and 14th Amendment rights violated by this scheme adopted and enforced by the state which, through user fees and systematic error, excessively taxes the ownership rights to the special properties in order to help finance general services? [See

Item X, App 54.]

E. It follows from E above: is it a violation of an owner's rights to due process and equal protection whereby the excessive tax against his special properties unnecessarily diminishes the market value of his special property? [See Item XIII, App 68.]

F. Does this scheme amount to a conspiracy to defraud, as the petitioners have alleged? And, since the excessive bills are sent through the United States mail, does the scheme violate 18USC§1341 (mail fraud), 18US§1961-68 (racketeer influenced and corrupt organization act), 42US§1981 (the right to equality under taxation), 42US1983 (deprivation of rights), 42US§1985 (conspiracy to interfere with civil rights), 42US1986 (neglect to prevent a conspiracy), and 42US2000(d) (subsidy through the tax system)? [See Item XV, App 72.]

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA in and for the THIRD APPELLATE DISTRICT

Robert L. Middleton and Marian S. Middleton petition for a writ of certiorari to review the judgment of the Third Appellate Court of the State of California rendered on March 28, 1986, declining to review the federal constitutional issues that this Petition for Certiorari presents.

OPINIONS BELOW

The Third Appellate Court denied these petitioners' "petition for extraordinary relief in the nature of prohibition and mandamus" without holding a hearing and without rendering an opinion and the California Supreme Court denied the request for review. Both decrees are printed in the appendix attached hereto.

JURISDICTION

These petitioners properly presented their constitutional claims for relief in the form of prohibition and mandamus and cited the federal issues in the Third Appellate Court and the California Supreme Court. The Appellate Court denied the petition without a hearing and without offering an opinion and the Supreme Court refused to review.

The jurisdiction of this court is conferred on this court by 28 USC §1257(3) (1982) and §1343, and under count 11 (see App 76) [the Racketeer Influenced and Corrupt

Organizations Act, 18 USC §§1961-1968], this Court's jurisdiction is invoked pursuant to 18USC§1964 and the general Federal question statute, 28 USC §1331(a).

The following cases sustain jurisdiction:

Denial of a hearing by the California Supreme Court exhausts the California remedies and the case may be properly reviewed by the U. S. Supreme Court, Douglas v California (1963) 372US353, 354, 83SCt814, 9L.Ed2d811. Madruga v Superior Ct. County of San Diego, (1953) 346US556, 97L.Ed208; Detroit & M.R.Co. v Michigan R. Comm. (1916) 240US564, 36SCt.424.

Where federal right is concerned, Supreme Court is not bound by characterization given state tax by state courts or Legislatures, or relieved from duty of considering real nature of tax and its effect upon federal right asserted. Carpenter v Shaw, Okl.(1930) 50S.Ct121, 280US363, 74L.Ed.478; St. Louis Cotton Compress Co. v State of Arkansas, Ark.(1922) 43S.Ct.125, 260US346, 67L.Ed.297;

Storaasli v State of Minnesota, Minn.(1931) 51S.Ct.354, 283U.S.57, 75L.Ed.389, Lawrence v Tax Comm.(1932) 286US276, U.S. v Mandel (1976)415FS1025, U.S. V Margiotta, 688F2d108, U.S. v Lavin, (1981) 504FS1356.]

Amount In Controversy

The amount in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs.

STATEMENT OF THE CASE

The petitioners allege the statutes governing LOCAL TAXATION in the State of California are so constructed that they are contrary to the mandates of the state constitution, contrary to themselves and to the due process and equal protection, and equal immunities and privilege clauses to the 5th and 14th amendments to the United States Constitution, and that they violate many state and federal laws.

With the notable exceptions of a "bed tax"

[RTC §§7280-82] for temporary residents, necessary regulatory fees and fines from the exercise of police power, CASE and COMMON LAW holds that, in general, local "general services" must be financed by a tax against the "general property" of all those in a community who benefit from the service provided, and that the only taxable general property is present net income above the subsistence level.

But contrary to federal constitution and statutes these respondents have adopted and enforce laws to support local services which amount to a "racket" -- laws which arbitrarily exempt the general property of income [RTC §17041.5], others which by systematic error (corrupt assessment of income) double tax ownership rights to special properties [See App 51-60], all of which they profess to be against their intent [See item VIII, App 47].

These petitioners properly invoked the jurisdiction of the California Supreme Court at pg. 24 of their petition for Extraordinary

Relief in the Nature of Prohibition and Mandamus, with supporting memorandum of points and authorities, and filed the petition with the clerk of the California Supreme Court as Civil No. S.F. 24962 on January 6, 1986, and paid the filing fee of $200.00.

In that the petition was of such an important nature, on February 18, 1986, the petitioners notified the Supreme Court that they were to be on a trip through March 5 -20, 1986, and asked the court to schedule a hearing on March 31, or as soon thereafter as was reasonably possible.

On February 25, 1986, the California Supreme Court Transferred the petition to the Third Appellate Court. Signed BIRD, C.J.

On February 26, 1986, the Third Appellate Court refiled the petition in its court as 3 Civil No. 25998.

On March 7, 1986, the Third Appellate Court denied the appellants' petition without holding a hearing and without rendering an

opinion. Signed by BLEASE, Acting P.J.

On March 27, 1986, the petitioners filed a notice of appeal from the judgment of the Third Appellate Court (Request For Review) in the California Supreme Court, Notice Designating Papers and Records for Incorporating in the Record on Appeal, and a Request for a court order to Wave the 10 day Filing Period Allowed by Court Rule 28(b). They again paid a $200.00 filing fee.

On March 28, 1986, Laurence P. Gill, clerk of the court, notified these petitioners that "The application for relief from default and petition for review were presented to the court for its consideration." And saying: "The court directed that the petition for review be returned for the reason that it would not grant the permission necessary to allow the untimely filing." He enclosed a copy of the court's policy statement concerning the action, and returned the $200.00 filing fee.

The notice of appeal herein was placed in

the United States mails on May 28, 1986, with postage fully paid to both the Third Appellate Court and the Supreme Court of California and to each of the real parties in interest.

REASONS FOR GRANTING THE PETITION

A. The California Third Appellate Court Denied These Petitioners' Petition Without a Hearing or Rendering an Opinion, and the California Supreme Court Refused to Review

The California Third Appellate Court's summary denial of the petitioners' petition without a hearing or rendering an opinion on March 7, 1986, and the subsequent March 28, 1986, refusal by the California Supreme Court to review allows these petitioners to seek a review by the United States Supreme Court in that they raised a substantial number of federal questions in their original pleadings.

B. The California Constitution Exacts a Uniform Application of the Laws but Through Fraud Denies it Under Local Taxation

The Calif Const. Article IV §16(a) exacts a uniform application of the laws but allows its denial under taxation. Through deceit in the voters' pamphlet the respondents removed the clause from Art XIII §1 which until 1974 held that money is a taxable property. [See C below, refer App 34, and Item X, App 54.]

C. The 1974 Proposition 7, Initiated by the Respondents, Corrupted the Calif Const Making it Repugnant to the United States Const and Violates the State-Federal Contract for Admission

a/ The repugnant change diluted our fundamental rights by adopting the permissive word "may" in place of the mandatory word "shall"

In 1974 by a legislative process Proposition 7 was presented to the voters. Through a deceit in the voters' pamphlet to this proposition the constitution was changed which makes it repugnant to California's contract with the United States Government. It was subsequently passed by the unsuspecting but trusting voters in the November election. Among other things, in each of the below noted

cases the proposition diluted our individual Civil Rights by removing the mandatory word "shall" in three articles and by substituting the permissive word "may" in two of the new articles. Proposition 7 repealed Const Art 1, §13 which paralleled the "mandatory" nature of the 14th amendment stating:

> "...no person shall be deprived of life, liberty or property without due process of law."

And substituted the "permissive" Art 1, §7(a) which states:

> "No person may be deprived of life, liberty or property without due process of law."

Proposition 7 repealed Const Art 1, §21 which paralleled the 14th amendment guarantees stating:

> "A citizen or class of citizens shall not be granted privileges and immunities not granted on the same terms to all citizens."

And substituted the permissive Art 1, §7(b) which states:

> "A citizen or class of citizens may not be granted privileges and immunities not granted on the same terms to all citizens."

Proposition 7 repealed Const Art 1, §11 stating:

> "All laws of a general nature shall have a uniform operation."

And substituted the corrupted Art IV, §16 which states:

> "All laws of a general nature have a uniform operation."

Proposition 7 revised Const Art XIII §1 to remove the portion which included money as property (see quote in Item IV, App 34).

b/ The Legislative Analyst Deceived the Voters [Exhibit #7, p. App 88]

The fundamental rights were already asserted in the California constitution, yet the legislative analyst stated:

> "This proposition revises Article I of the State Constitution, which declares the fundamental rights of the people of the state. The proposition ... (3) puts into the Constitution some rights which now exist in the federal Constitution,...
>
> The proposition puts the following rights into the State Constitution.
>
> (b) A person may not be deprived of life, liberty, or property without due process of law.
>
> (c) A person may not be denied equal protection of the laws...These rights already exist either in the United State Constitution or in present law. The amendment makes them

part of the California Constitution..."

c/ The Legislative Committee deceived the voters [Exhibit #8, App 89]

In the argument in favor of proposition 7 [signed by Judge Bruce Sumner, chairman of the Constitution Revision Commission, Ken Meade, Assemblyman 16th District, and Alan Robbins, Senator 22nd District] it states, among other things:

> "...This proposal was adopted by the legislature after four years of study and consideration in committee and after answering the questions of all the individuals and organizations concerned with California's 'Declaration of Rights' Article. There is no known opposition to proposition 7.
>
> STRENGTHENS YOUR INDIVIDUAL RIGHTS
>
> Proposition 7 revises Article I of the California Constitution ... contains and places in our State Constitution some of the rights enjoyed by Californians as citizens of the United States, but which are not presently in our State Constitution. For Example Proposition 7 adds to our constitution the right of all Californians to due process of law...These rights and safeguards are not presently in the California constitution, but should be.
>
> VOTE "YES"
>
> A "yes" vote will help modernize and

shorten California's Constitution. It will help finish constitution revision which has been in process for nearly 10 years. Make sure that your rights are clearly and strongly stated. Join the many groups who support this revision of an important article of the constitution....

Join us in a YES vote for better government."

The rebuttal to Argument in Favor of Proposition 7 by Robert C. Kline, Assemblyman of the 64th District, urged a NO vote because, among other things, "the controversial parts of this proposition should be separated from the noncontroversial, technical parts and presented separately for the voters."

d/ The Legislative Comm. Admits the Calif statutes are not uniform [Exh. #9, App 90]

In Sumner, Meade and Robbins' rebuttal to Argument Against Proposition 7 they admit the state laws lack uniformity - that they do not conform to the federal laws. For they state:

"Shame on those that appeal to past bigotries to prevent our constitution from being an accurate statement of the fundamental law of California as it is today."

e/ California lacked the right to unilaterally change laws of the state-federal contract

It is a condition of California's admission to the United States that the fundamental rights guaranteed by the federal constitution be guaranteed also by the state. The people of the state did not have the right to change the constitution unilaterally and in so doing dilute those rights to make them repugnant to the admission contract. (Coyle v Smith, Okl., 31S.Ct.688, 221US559, 55L.Ed.853.)

In Ex parte Yarbrough, 110US658, 28L.Ed.276, 4Sup.Ct. Rep.152 the court stated:

> "Compacts made between the states and the general government are, in their nature, contracts between sovereign powers, and as such cannot be abrogated or impaired except by the common consent of the parties making such compacts."

D. The Local Tax Scheme Amounts to a State Conspiracy to Defraud

a/ It excessively taxes leases of tax exempt property and omits leases of private property [RTC §107.2, 107.3, and Board Rule 21].

b/ In Article XIII, §9 and RTC §401.4 it taxes the homeowner for general and special services on the use of his owner-occupied residential property and omits the renter of similar property. [See item X, App 58-59.]

c/ It taxes all general property, income, in RTC §401 and exempts it in RTC §17041.5.

d/ It allows the locals to tax possessory interest in RTC §§107 and 107.1, but fines him if he does in Govt C §§15606 and 15615 [Item IX App 51].

e/ It illegally "converts" private property in action (sales taxes), as if it were a tax on the business owner's income and supposedly prevents it in Civil C §1573 and RTC §17041.5. [See para. 4(h) at App 11].

f/ It directs a procedure for recovery of excess property taxes, but finally prevents any relief [Item XVI, App 77].

g/ The respondents intentionally exempt most possessory interests and then deny that is their intention [Item VIII, App 49].

E. **The Above Indicated Conspiracy to Defraud Violates Many Federal Laws; Most Notably, Since 1971 it Has Been in Violation of 18 U.S.C. §§1961-1968**

Since C Art III §1 accepts the fact that the United States Constitution and the laws made in pursuance thereof are the supreme laws of the land (U.S. Const Art VI §2), the action:

a/ Denies U.S. 5th and 14th amendment, rights to due process and equal protection, equal privileges and immunities.

b/ It violates the assessed special property owners' civil rights to equal treatment under taxation, 42US1981. It was said by the court in Ridinger v Gen. Mtrs. Corp., 325FS1089:

> "The ultimate purpose of all civil rights legislation is to guarantee nondiscrimination in treatment and equality before the law, and to achieve such a purpose, civil rights legislation generally requires that each individual be considered on the basis of his individual capabilities and not on the basis of any characteristics generally attributable to a group."

c/ It is a violation of 42US1983 (deprivation of rights), for it improperly attacks the rights to property for general government services instead of attacking income severed from its source;

d/ It is a violation of 42US1985 (conspiracy to interfere with civil rights), for many government officers are involved in an intentional "taking" of property;

e/ It is a violation of 42US1986 (neglect to prevent conspiracy), for the governor and the attorney general and their counsel have the duty to prevent a conspiracy;

f/ It is a violation of 42US2000(d) (unlawful assistance through the tax system), for all the persons whose incomes are not assessed for the general fund are receiving benefits that they did not pay for but which are being paid for by the land, improvement and equipment owner [McGlotten v Connally (1972)338FS448, 84CJS Taxation §30, note 82, NML Ins. Co. v Suttles, 38SE2d786, 329US801]; and it lacks the required

uniformity to raise revenue for general purposes, [Hamilton v Arch Cons.Dist.75P2d707, 710, 42N.M.86, 61CJ p106, note 84, State v Ingalls 135P1177, 1180];

g/ It is a violation of 18US1341 (Mail Fraud) since the improper assessments and excessive tax bills are sent through the United States mails [U.S. v Lavin, D.C.Ill (1981), 504FS1356];

h/ It is therefore a violation of the Racketeer Influenced and Corrupt Organization Act (RICO) of 1970, 18USC §§1961-68. [U.S. v Mandel(1976) 415FS1025, U.S. v Margiotta 688F2d108 (2d Cir. 1982)].

These respondents have intentionally and willfully adopted a scheme of local taxation which is inimical to the access to general local services and to the ownership of real estate, equipment and all special properties. They knowingly and by unlawful means place the private sector in a vulnerable competitive position with its offshore

counterpart and with respect to the governmental sector.

This scheme gives those employed in the public sector an unfair advantage over the taxed private sector business employers and their employees. For as competition from offshore industries increases, unemployment in our private sector increases in many cases. Insurance and money rates rise to meet an increasing risk - a risk not attendant to employment in the public sector. But at the same time public sector employees expand regulatory and welfare agencies and raise the tax rates and fees to meet the increasing demands and to maintain their own unchecked and untaxed personal incomes. Thus it puts an ever greater burden on the private sector and ever widens the unfair advantage granted [the unfair privilege granted] those employed in the public sector over those in business or employed in the private sector.

F. A History of My Futile Search for Relief in State Courts

In October 1973 I hired attorney Lloyd L. Hicks, of Visalia, Calif., to file a suit challenging the constitutionality of the tax scheme and holding that at the local level income however earned was taxable property. He resisted filing a complaint until over a year later. During this time the members of the bar in conspiracy with the legislature initiated proposition 7 in order to corrupt the constitution to parallel the corrupt local tax scheme in ahead of my complaint.

The trusting voters passed the change on Nov. 5, 1974. And nine days later on November 14, 1974, Mr. Hicks filed the complaint (written by James Line) in the Tulare County Superior Court as Civil #78405. The Court upheld the defendants' demurrer on the basis that Exhaustion of Administrative Remedies was necessary before a suit could be filed. During 1975 I exhausted my administrative remedies and

Mr. Hicks abandoned me. [My attorney costs approximately $3000.00.]

Then I advanced $1000.00 to hire attorney Sidney M. Levin in Tulare, Calif. who tried to time me out of court by a late filing. On the last day possible to file I forced him to write a complaint. And I filed a new suit in the Tulare Co. Superior Court. as Civil #82645.

The court upheld the defendant's general demurrer with leave to amend. As the last day approached to amend, Mr. Levin hadn't done anything - again trying to time me out of court. Since he had done this twice I dropped him and continued as my own attorney. I amended. The court upheld the respondents' demurrer without leave to amend and I filed an appeal in the Fifth Appellate Court As 5 Civil #3651. The court upheld the lower court's action and the Calif. Supreme Court refused to review.

I exhausted my administrative remedies again and filed a new suit #94742 in the Tulare

Co. Superior Court on Sept. 5, 1979, revealing the fraud in the scheme, and extended the defendants to include many state and local assignees. The superior court upheld a general demurrer and as 5 Civil #5331 the 5TH Appellate Court upheld the lower court, and the State Supreme Court again refused to review.

I sold my farm in Tulare County California in June 1980, built a new home here in Pismo Beach, Calif. and moved here in August 1981. Since then I've exhausted administrative remedies and again was denied relief by the local board of equalization, the state board and the county insurance carrier. My attention was called to the statute that instructed me to file suit in the superior court. But realizing how futile the process was I got together this pleading which shows the original jurisdiction of the California Supreme Court and now the jurisdiction of the United States Supreme Court.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue.

Respectfully submitted

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Robert L. Middleton

Marian S. Middleton
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VERIFICATION

We Robert L. and Marian S. Middleton, are the acting petitioners in this proceeding. We have made the foregoing Petition for Writ of Certiorari and know the contents thereof. The same is true of our own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, we believe it to be true.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on

June 26, 1986 at Palm Beach, California.

Robert L. Middleton
ROBERT L. MIDDLETON

Marian S. Middleton
MARIAN S. MIDDLETON

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, say:

I am a citizen of the United States and a resident of San Luis Obispo County, California, over the age of eighteen years. My business address is 211 Coral Court, Pismo Beach, California, 93449. Pursuant to Rules 28.3 and 28.5(b) of the Rules of the Supreme Court, I this day, July 25, 1986, served (3) copies of the foregoing Writ of Certiorari to the Third Appellate Court of California upon counsel for the respondents required to be served by depositing a true copy thereof in the United States mail in Pismo Beach, California, enclosed in a sealed envelope with the postage thereon fully prepaid, addressed as follows:

John Van de Kamp, California Attorney General
1515 K Street, Suite 511, Sacramento, CA 95814

David Roberti, Speaker of the Senate
State Capitol Bldg., Sacramento CA 95814

Willie L. Brown, Jr., Speaker of the Assembly
State Capitol Bldg., Sacremento CA 95814

Daniel Boatwright, Chairman
Senate Revenue and Taxation Committee
State Capitol Bldg., Sacramento, CA 95814

Tom Hannigan, Chairman
Assembly Revenue and Taxation Committee
State Capitol Bldg., Sacramento, CA 95814

George Deukmejian, Governor
The State of California
State CApitol Bldg., Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed 7-25-1986, at Pismo Beach Ca

Robert L. Middleton
ROBERT L. MIDDLETON

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Revenue and Taxation Code

§97.65 (a) For the 1985-86 fiscal year and each fiscal year thereafter, no jurisdiction shall impose a property tax rate pursuant to subdivision (a) of Section 93, unless it is imposed for one or more of the following purposes: .. 10

(1) To make annual payments for the interest and principal on general obligation bonds approved by the voters before July 1, 1978.

(2) To make payments to the State of California under contracts for the sale, delivery, or use of water entered into pursuant to California Water Resources Development Bond Act....

(3) To make payments pursuant to lease-purchase programs approved by the voters before July 1, 1978.....

(4) To make payments in support of pension programs approved by the voters before July 1, 1978.....

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following: (a) Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person.

(b) Taxable improvements on land.

Any possessory interest may, in the discretion of the county board of supervisors, be considered as sufficient security for the payment of any taxes levied thereon and may be placed on the secured roll.

Leasehold estates for the production of gas, petroleum and other hydrocarbon substances from beneath the surface of the earth, and other rights relating to these substances which constitute incorporeal hereditaments or profits a prendre, are sufficient security for the payment of taxes levied thereon. These estates and rights shall not be classified as possessory interest, but shall be placed on the secured roll.

§107.1: Possesory interest may be taxed 10

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estates in exempt property for the production of gas, petroleum and other hydrocarbon substances from beneath the surface of the earth, and all other hydrocarbon substances from exempt property (all of which rights are hereinafter in this section referred to as "such oil and gas interests"), is the value of such oil and gas interests exclusive of the value of any royalties or other rights to share in production from exempt property owned by any tax-exempt entity, whether receivable in

money or property and whether measured by or based upon production or income or both.

§107.3: The full cash vale of leasehold estates in exempt property for the production of gas, petroleum, and other hydrocarbon substances from beneath the surface of the earth and all other taxable rights to produce gas, petroleum and other hydrocarbons substances from exempt property (all of which rights are hereinafter in this section referred to as "such oil and gas interests), is the value of such oil and gas interests, exclusive of the value of any royalties or other rights to share in production from exempt property owned by any tax-exempt entity, whether receivable in money or property and whether measured by or based upon production or income or both..... 10

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§212: Notes, debentures, shares of capital stock, solvent credits, bonds, deeds of trust, mortgages, and any interest in such property are exempt from taxation. Money on hand to be used in the ordinary and regular course of a trade, profession, or business is exempt from taxation. 50

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§3436: On or before June 30, at the time fixed in the publication of the notice of intent to sell to the state, the real 79

property on which the taxes, assessments, penalties, and costs have not been fully paid, except tax-sold property and possessory interests, shall by operation of the law and the declaration of the tax collector be sold to the state. The sale shall be in the tax collector's office.

§4807: No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected. 79

§4808: Notwithstanding any provision of law to the contrary, any taxpayer may, no later than 30 days after the delinquency date of a property tax bill or any installment thereof, seek declaratory relief in the superior court in the county in which the property is located alleging that the locally assessed property taxes have been illegally or unconstitutionally assessed or collected or are to be assessed or collected..... 79

This section shall not be interpreted to allow a taxpayer to postpone payment of property taxes pending the decision of the court. All assessment and collection provisions of this division shall continue to apply to properties affected by this section.

This section shall be applicable only in instances where the alleged illegal or unconstitutional assessment or collection occurs as the direct result of a change in administrative regulations or statutory or constitutional law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer.

The procedure for obtaining a declaratory

relief judgment under this section shall be the same as that used to obtain a writ of mandate.

§5141: (a) An action brought under this article shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part. (b)....(c).... 78

§6051: For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 6 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state 11

§17041.5: Municipal income taxes; 8

Notwithstanding any statute, ordinance, regulation, rule or decision to the contrary, no city, county, city and county, governmental subdivision, district, public and quasi-public corporation, municipal corporation, whether incorporated or not or whether chartered or not, shall levy or collect or cause to be levied or collected any tax upon the income, or any part thereof, of any person, resident, or nonresident.

This section shall not be construed so as to prohibit the levy or collection of any otherwise authorized license tax upon a business measured by or according to gross receipts.

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(a) Except as hereinafter provided, the judgment shall be conclusive upon the plaintiff.....
(b) The defendant may appeal the judgment to the superior court in the county in which the matter was heard, provided that, if the defendant seeks any affirmative relief by way of a small claims court, he shall not have the right to appeal from the judgment on the claim.

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§50026: The legislative body of any local agency, chartered or general law, which is otherwise authorized by law or charter to impose any tax on the privilege of earning a livelihood by an employee or any other tax, fee or charge on or measured by the earnings, or any part thereof, of any employee, shall not impose any such tax, fee or charge on the earnings of any employee, when such employee is not a resident of the taxing jurisdiction, unless exactly the same tax, fee or charge at the same rate, with the same credits and deductions, is imposed on the earnings of all residents, of the taxing jurisdiction who are employed therein. 9

This section shall not be construed as authorizing any tax prohibited by Section 17041.5 of the Revenue and Taxation Code or any other provision of law, nor shall it be construed so as to prohibit the levy or collection of any otherwise authorized tax upon a business measured by or according to gross receipts.

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§65974: For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, ... 12

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1968 Stats ch 771 - legis. intent to tax all poss. int. (quote at 49

1969 Stats ch 1509 - state board to change by 1971 (quote at 49

State Board Administrative Code

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(b) "Taxable possessory interest" means a possessory interest in nontaxable publicly owned real property, as such property is defined in section 104 of the Revenue and Taxation Code, and in taxable publicly owned real property subject to the provisions of sections 3(a), (b) and 11, Article XIII of the constitution.

Excluded from the meaning of "taxable possessory interest" is any possessory interest in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves.

(c) ...etc.

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ROBERT L. MIDDLETON and
MARIAN S. MIDDLETON
211 Coral Court
Pismo Beach, Ca 93449
Tele (805) 773-5135

Plaintiffs Acting
In Propria Persona

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

NO. S.F. 24962, THIRD APP. NO. 3 CIVIL 25998

ROBERT L. MIDDLETON and MARIAN S. MIDDLETON and

all those similarly situated

Petitioners

vs.

THE STATE OF THE CALIFORNIA et al

Respondent,

PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF PROHIBITION AND MANDAMUS, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

CCP §§1085, 1086, 1102 and 1103

Cal Rules of Ct, Rule 56

TO THE HONORABLE CHIEF JUSTICE AND

ASSOCIATE JUSTICES OF THE SUPREME COURT

OF THE STATE OF CALIFORNIA:

Petitioners Robert L. Middleton and Marian S. Middleton and all those similarly situated petition this court for Extraordinary Relief in the Nature of Prohibition and Mandamus directed to respondent members of the State Legislature, The Governor, The State Attorney General, and members of The State Bar of California, and by this verified petition allege:

1. Petitioners are all the individual resident and corporate private owners of the fee simple rights to land, improvements and equipment, the private owners of the rights to leases of publicly owned land, improvements and equipment, the private owners of the rights to leases for the extraction of hydrocarbons, oils and gas in the state of California, and supplicants requesting government employees perform certain general services.

The acting Petitioners are Robert L. Middleton and Marian S. Middleton, both over the age of eighteen years, who own a residence

with the address, 211 Coral Court, Pismo Beach, Ca., 93449, County of San Luis Obispo, Assessor Parcel No. 005-381-09-000 on which there is no tax delinquency.

2. Respondents are MEMBERS OF THE STATE LEGISLATURE, an agency of state government created by Const Art IV with an address of State Capitol, Sacramento, Calif 95814; THE GOVERNOR, the chief executive officer of the state government whose office was created by Const Art V with an address of State Capitol, Sacramento, Calif 95814; THE STATE ATTORNEY GENERAL, the chief law officer of the state whose office was created by Const Art V §13 with an address of 555 Capitol Mall, Suite 350, Sacramento, Calif 95814; the members of THE STATE BAR OF CALIFORNIA, a public corporation created under Const Art VI §9 with an address of 555 Franklin Street, San Francisco, Calif. 94102.

3. Real parties in interest are:
The Members of the State Legislature:

Speaker of the Senate, David Roberti

Speaker of the Assembly, Willie L. Brown, Jr.

Chrmn. Senate Rev. & Tax. Comm.,
Daniel Boatwright

Chrmn. Assembly Rev. & Tax. Comm.,
Tom Hannigan

The Governor of the State of California,
George Deukmejian

The Attorney General of the State of
California, John K. Van de Kamp

The members of The State Bar of California:
President, David M. Heilbron

4. California being an inseparable part of the United States per C Art III §1, the RESPONDENT LEGISLATURE has a clear, present duty as prescribed under the 5th and 14th Amendments to U. S. Const. and 42USC §1981 and C Art IV §1, C Art XIII §§1, 12, 26(a) to adopt laws to properly finance GENERAL GOVERNMENT AND DISTRICT SERVICES in order to protect the sovereign's land, improvements and equipment, to protect private property rights, to protect private civil rights, to protect persons and to promote the general welfare. C Art XI §11(a)

limits this legislative right to the legislsture itself subject to review by the Governor, the Attorney General, the Calif Supreme Court and ultimately the U. S. Supreme Court. In that these are all general benefits, and in order to protect the rights to special properties, it is reasonable that this financing should come from a tax measured on the basis of the general property, the income of each resident taxpayer in an assessment district. Other persons who regularly use the district's protection in the course of their occupations should be assessed to the extent that they use and/or obtain the benefits supplied by the district. The burden must be levied against the present income when severed or severable from the rights, i.e. severed from its source. Therefore each resident's name and the address of his principal residence, even if its only a P. O. Box number, should appear on the roll with an assessment of his income.

Further, the RESPONDENT LEGISLATURE has a duty as prescribed under the above statutes and C Art XIII §13 to separately assess private land, improvements (and equipment, livestock and crops added by the respondents) and levy an assessment against the owner thereof to the extent that local government furnishes fire and police protection to these special properties, so that the general public shall not be burdened by this purely private benefit.

The RESPONDENT ATTORNEY GENERAL'S duty pursuant to Govt C §12511 is to enforce state laws, preserve order,and protect public rights and interests. [Pierce v Superior Court (1934) 37P2d460, 1C2d759]. He then has the duty to take action against a fraud against the public or private interest when-ever and by whomever it is perpetrated even if it is perpetrated by state officers acting under color of state law.

The RESPONDENT GOVERNOR is charged with the duty of seeing that the laws of the state comply with the state and federal constitutions

and to see that they are faithfully executed. [Ahern v Bailey, 451P2d30]. His legislative powers are limited to his veto power and as such he is exercising legislative power. [Saffioti v Wilson D.C.N.Y.,392FSupp1335].

The RESPONDENT STATE BAR MEMBERS have duties as legal counsel to the officers of the state. The members are bound by the California State Constitution and the Federal Constitution and statutes just as are other government officers. Government officers, including the courts and taxpayers, place their trust in the members of the bar. Hence, its members are bound to address the adoption and execution of the laws governing taxation with respect to their own and government officers' fiduciary relationship with the tax-payers, free from unreasonableness, discrimination or fraud against any member of society and/or against the courts.

In order to finance local general services a tax on all net incomes when severed from

their source is the only way that all the local property can be measured to satisfy the demands of C Art XIII. However, the respondents abused whatever discretion they may have had in this case and perpetrated a fraud on the sovereign people of this state; for in 1963 without constitutional authority, justification or reason they adopted RTC §17041.5 disallowing the constitutionally mandated tax on income, (But see LEGISLATIVE INTENT Item VIII, App 49), even though they had determined from the same wording in the same constitutional sections the tax was proper to fund state level general services and adopted RTC §§17501-540 to implement it. And it should be noted that in 1913 the people of the United States adopted the Sixteenth Amendment to implement a similar tax on income at the federal level to finance federal general services.

Then, in order to finance general services and as if money severed from its source had no taxable value, the respondents adopted statutes

which make a "racket" out of the local tax scheme by levying discriminatory taxation against the rights to certain special properties and permitting local districts and governments to charge fees for private access to certain general services.

In general the respondents' offending statutes are:

a) The first paragraph of RTC §17041.5 which disallows a tax based on income at the local government level (cited above);

b) The second paragraph of RTC §17041.5 and Govt C §50026 which permit local governments to adopt ordinances which when exercised extort fees from citizens applying for a license to operate private businesses, and which allow all employees, who are also in business, an immunity from a similar license fee.

c) RTC §§1-6000 which excessively taxes the ownership rights to land, improvements and equipment, i.e. the levy is not limited to the

cost of providing fire and police protection to the assessed properties;

d) RTC §§97.2 and 97.65 [AB13 of 1985] which levy a tax against certain special properties (not general) to finance the pensions of general service government employees which should rightfully come from a general tax on income;

e) RTC §107.1 which levies a tax against an owner's rights to future income to be realized from operation under contracts for the use of tax-exempt land and equipment, and thus contrary to and in spite of RTC §17041.5 disallowing a tax on income, and which omits the synonymous contracts held by all government employees;

f) RTC §§107, 107.2 and 107.3 which excessively tax leases on tax-exempt property based on the cost of securing the right for the extraction of hydrocarbons above the cost of fire and police protection of the site;

g) Govt C §53978 which permits local

governmental entities to levy a tax to finance fire and police protection against special properties ignoring the fact that such protection for persons must come from a general tax on income, and that the protection of land, improvements and equipment must be separately financed.

h) RTC §§6051-7176 which permits government agents to take illegal possession of private tangible property in the process of being sold (things in action) and convert unto themselves a profit in the things of another and used to finance general services. It is intended to be levied against the income of the one in business contrary to and in spite of para. one of RTC §17041.5 and/or for the privilege of operating a business, whether or not for a profit, [Mkt.St.R.Co. v St. Brd. of Equalization (1955) 137CA2d87, 290P2d20], and ignoring all employees who have the privilege of being in business for an actual profit;

i) In Govt C §§65970-65974, allowing local governments to withhold permit fees from land developers in order to extort money and/or land and improvements to finance a general service [See Item XV(3),App 73];

j) Govt C §§54990-95 which permits local government employees to refuse to perform a general service duty - issue business licenses, use permits, zone variances, bldg. inspect etc.- thus to extort money and/or land and improvements from private parties [See Item XV(3),App 73];

k) C Penal Code §519 naming the offenses of theft by extortion unlawfully omits "theft by withholding official action," [See ABA code §223.4(4) at XV(3), App 73-74.]

l) The State Lottery, Const Art IV §19(d), which set up a valuable business income to government employees, but lacking a tax on its present income value to those in receipt of the money thus collected or against those receiving the prize money;

m) RTC §2151 calling for the county supervisors to set a single tax rate. It should be amended to call for setting two tax rates, one on an assessment of income for general services and one on the assessment of private land, improvements and equipment for their special protection.

n) Const Art XIIIA whose fixed one percent tax rate excessively taxes the special properties, the excess collections being allowed to help finance general services.

5. Petitioners are citizens and taxpayers and are concerned that respondents perform their duties under the law because the present local tax schemes amount to a fraud against the ownership of the fee simple rights to certain special properties. The scheme extorts an excessive tax from the owners thereof. Then subsequent laws, which are proper only in the case where a tax is assessed and levied against all resident taxpayers' annual income, the owners discriminated against are forced to pay

the whole tax, including the excess levy, through the fear of losing his property to the state for taxes unpaid. Or, as the respondents' law directs, he may each year pay the whole tax under protest, take the issue through a local administrative process, and file a law suit in the superior court in an attempt to recover the excess taxes paid, a recovery barred by the law. In each instance the property owner is deprived of his 14th amendment constitutional right to due process and equal protection.

6. These petitioners are persons beneficially interested in the issuance of a writ by virtue of the fact that the market value of their owner-occupied residence, APN 005-381-09-000, is being unnecessarily diminished; and there is no way to determine whether they are paying their fair share of the local tax unless the local tax assessor assesses all the taxable annual incomes in his district, including that of these acting

petitioners.

Petitioners submit the overall tax collections are too high in that those to whom the collections are paid are not paying a tax measured on their income, or as the courts have construed, for their right to be in business.

The constitution binds the respondents to protect the intangible rights to property. Instead the respondents' scheme attacks them and unlawfully omits almost all of the taxable general property making it difficult and expensive for municipalities to finance general services. They have had to adopt extreme measures, schemes beyond the pale of the law, to pay for general services.

This improperly adopted scheme works to the detriment of the economic health of low income homeowners and renters and farm owners, in effect, all of the "special property" owners and to the detriment of the economic health of the local districts and/or municipalities throughout the state. One should begin to

wonder just how close we are getting to that point at which the rights to own private land, improvements and equipment is a liability instead of an asset.

The local property tax scheme, coupled with the state and federal tax on corporate income tax, all attacking the corporate income before the rightful owners receive the income as dividends, forces private utilities to become involuntary tax collectors. It forces an inappropriate rise in utility rates which unnecessarily discrimiates against low income customers. For example, in 1984 the common stockholders in Pacific Gas and Electric Co. were forced to pay 810.7 million dollars in taxes prior to their receipt of a single dollar in dividends. Of that amount, fifteen million dollars was in property tax on the Diablo Power Plant alone from which no corporate income was being generated. Using the state board's usual 6% capitalization formula, that amounts to government employees unlawfully taking prior

possession of approximately 13.5 billion dollars of the stockholders' property.

Without question in many past court cases addressing this issue the courts have been fraudulently used; that is, a fraud has been perpetrated on the court by both the plaintiffs' and the respondents' counsel in order to perpetuate the existence of this discriminatory scheme.

7. It is proper to bring this suit for relief in the form of prohibition and mandamus in the California Supreme Court in order to compel action by state officials in a statewide issue. And exhaustion of administrative remedies is not available to try a statewide action, for no local remedies are available. (See Item XVI.)

8. It is reasonable to conclude that the legislature has since the 1971-72 tax year meant to include the assessment of all incomes in the local general property tax scheme. [See Item VIII, App 49]. But it has failed to repeal the first paragraph of RTC §17041.5

which disallows a local tax based on income; and paragraph 2 of the section and Govt C §50026 do not issue a clear and direct statement to implement one. Thus, without specific legislation directing such a tax and bound by strict conformance, the state board, which has the authority under Const Art XIII §§18 and 19 and Govt C §15606 of administering the local tax laws, is without authority to implement one. And the local agents have not been given that right since Govt C §§15606 and 15615 forces them to follow the state board rules and regulations.

9. The respondents have had approximately 150 years to perform the duty mentioned above. Notwithstanding such ability respondents continue to fail to perform such duty.

10. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition, in that RTC '4807 bars an injunction against the collection of property taxes assessed,

Art XIII §32 bars a court process before paying the tax levied and RTC §4808 through timing bars the recovery of any excess taxes paid. [See Item XVI, App 79.]

11. The failure of the respondents to limit the levy against land and improvements to the cost of their protection has damaged these acting petitioners' property rights (diminished the market value) to their Pismo Beach residence (APN 05-381-09-000) in the sum of approx. $33,284.00.[See Item XIII, App 68 .] A similar irreparable damaging figure can be found for every assessment made against the properties assessed under the property tax scheme throughout the State of California except those cases where the fee simple right to an income bearing property was part of an assessee's income during the past assessment year.

12. This petition is made to this Court in the first instance rather than to the Superior Court of the State of California, County of San

Luis Obispo, for the following reasons:

In that the respondents' statutes at issue are general and apply throughout the state and thus any other procedure would involve a multiplicity of suits. [Lockhart v Wolden (1941) 17C2d628, 111P2d319; Const Art VI §10]; and in that the initiative process, reserved to the people in Const Art IV §1, is no match to the legislature's inventive genius in adopting statutes to further grant themselves and other employees this favored privilege, or a special advantage, of being subsidized by the special property owners.

In this instance the people have paid the respondents to perform a public duty, but instead of properly performing it, in many instances they have taken advantage of their fiduciary relationship and adopted laws which give themselves an advantage and which interfere with the peoples' constitutional right to place things in action (sell goods), to engage in a business enterprise and to

maintain ownership of land, improvements and equipment.

These petitioners submit that to force the people of this state to pay for correcting the respondents' present and future manifestly improper actions through the initiative process or lawsuits would be itself a denial of due process and equal protection.

13. The issue presented in this petition has great public importance and requires prompt resolution in that a correction of the offending statutes would benefit so many of the state taxpayers by placing the burden of financing local general services on the proper properties and parties. It would greatly simplify the scheme of local taxation, lower the cost and complexity of municipal government and lower the overall tax burden on the private sector.

The fact that complete and final relief may be given to taxpayers' rights to own the special properties and be free from

governmental interference by the issuance of a single writ fortifies petitioners' argument supporting the propriety of this particular proceeding. [Lockhart v Wolden (1941) 17C2d628, 111P2d319].

If at the local level, in line and conjunction with the present withholding tax on income now in place for state and federal income taxes, the respondent legislature were forced to implement the constitutionally mandated tax on the GENERAL PROPERTY of income at the local district, city and county level to finance general services, and the present assessment against the ownership rights to the special properties (land, improvements and equipment, leasehold rights to tax-exempt property and leases for the extraction of hydrocarbons, oil and gas) were limited to the cost of fire and police protection of the site itself, such a scheme would:

a) Make the legislative statutes agree with the California Constitution;

b) Initiate an income to local government at the very inception of any activity, planning, design, construction or whatever;

c) Preserve the sanctity of private property rights;

d) Preserve the integrity of the courts;

e) Make possible the adequate and proper financing of all general local government business;

f) Save low income assessees their homes, farms, equipment and factories; at present whatever support the federal government gives the low income farmer and homeowner the state destroys with this twisted, excessive tax, against his rights to ownership;

g) Create a favorable climate in which prospective homeowners could buy homes without the present large initial permit fees worked into the purchase price;

h) Create a healthy industry building and repairing homes and expanding businesses, which would reduce unemployment and the burden of

welfare;

i) Properly place the burden of LOCAL WELFARE on those with the income with which to pay for it, whether in the public or private sector;

j) Dampen the effects of recessions on the economy, in that at such times when income to the private sector is reduced, those employed in the public sector and the money lenders would properly shoulder a greater percentage of the local tax burden;

k) Make it easier for local governments to raise money to finance the purchase of land and improvements in that it would raise their bond rating and lower prospective interest rates;

l) Save much of the federal government's required subventions to state and local governments which would help balance the federal budget.

WHEREFORE, petitioners pray that the court will exercise its power granted in C Art 1 §7(b) which states: "Privileges or immunities

granted by the Legislature may be altered or revoked" and:

1. a) Revoke the special privilege or immunity granted by the respondents to "present income severed from its source;

b) Hold invalid Const Art XIIIA, paragraph one of RTC §17041.5, RTC §§97.3 (1985), 97.65 (1985), 107, 107.1, 107.2, 107.3, Govt C §§54990-95 and 65970-74, and all local ordinances relying on these statutes;

c) Hold RTC §§6051-7176 (sales taxes on private tangibles in action) invalid to finance general services except where it is a general public benefit to penalize the use of, or for damages caused by the use of, an item;

d) Hold C Penal C §519 invalid where it omits paragraph (4) of section 223.4 of the ABA Model Penal Code which makes it theft by extortion for government officers to withhold a general official action in order to purposely obtain property of another;

e) Issue an alternative writ of mandamus

to compel the respondents to adopt laws to implement a local tax measured on the basis of present net income when severed from its source to finance local general services, and to hold the levy against the special properties of land, improvements and equipment and oil, gas and mineral sites to an amount to furnish only their fire and police protection;

f) That the court issue an alternative writ prohibiting levies against any special property, or the use of license, permit or performance fees to finance general government or district services;

OR TO SHOW CAUSE BEFORE THIS COURT AT A TIME SPECIFIED BY COURT ORDER WHY THEY HAVE NOT DONE SO,AND WHY A PEREMPTORY WRIT OF MANDATE AND PROHIBITION SHOULD NOT ISSUE;

2. That on the return of the alternative Writ of Mandamus and Prohibition and the hearing of this petition, this court issue its peremptory writ of mandate commanding respondents to adopt statutes governing local

taxation for general and special services which would:

a) Finance local general services by a tax on income of all taxpayers receiving the benefits and allowing a subsistence income immunity;

b) Limit the levy against land, improvements and equipment to the cost of its protection;

c) Prohibit the assessment of a taxpayer's income on the basis of another taxpayer's income;

d) Prohibit the assessor from assessing the value of a lessee's interest against the lessor, or against anyone's interest other than the one in receipt of the income;

3. For damages to these acting petitioners for respondents' unlawfully diminishing the market value of the rights to these acting petitioners' residence in the sum of 33,284.00 dollars; and 500,000 thousand dollars for acting petitioners' work in pursuit of this issue.

4. For costs of this proceeding and for such

other and further relief as the court deems just and proper.

Respectfully submitted,

Dated: December 9, 1985

/s/ Robert L. Middleton
ROBERT L. MIDDLETON

/s/ Marian S. Middleton
MARIAN S. MIDDLETON

Petitioners Acting
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Plaintiffs Acting
In Propria Persona

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ROBERT L. MIDDLETON and MARIAN S. MIDDLETON and

all those similarly situated

Petitioners

vs.

THE STATE OF THE CALIFORNIA et al

Respondents,

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF PROHIBITION AND MANDAMUS

CCP §§1085, 1086, 1102 and 1103

Cal Rules of Ct, Rule 56

The undersigned petitioners and all those similarly situated allege:

I

ISSUE

The issue in this petition is the presence of unconstitutional and misconstructed laws governing local taxation which in the main have been created by state employees and followed by the local administrators to the detriment of the economic health of the state. [For a detail statement of the issue refer to paragraph (4), App 5 - 13.]

II

JURISDICTION

It is proper to bring this suit for relief in the form of prohibition and mandamus in the California Supreme Court in order to compel action by state officials in a statewide issue; for mandamus pursuant to CCP §§1085 and 1086, [Rosner v E.T.H.District (1962),58C2d592, 599]; and for prohibition pursuant to CCP §§1102 and 1103, [Maurer v Mitchell (1878), 2 C.Leg.Rec. 180, Slinack v Superior Court (1932) 13P2d670, 216C99, A.G.Col Co. v Superior Court 196C604,

238P926]; and in this case exhaustion of administrative remedies is not available to try a statewide action, for no local remedies are available [Trim Inc. v Monterey Co.(1978) 86CA3d539]. (See Item XVI, App 77.)

III

GENERAL GOVERNMENT LOCAL SERVICES AND SPECIAL SPECIAL LOCAL SERVICES

GENERAL GOVERNMENT LOCAL SERVICES, addressed under C Art XIII §§1, 12 and 26 include, but are not limited to: fire and police protection of the sovereign's land, improvements and equipment; the protection of persons and their rights including their rights to private land, improvements and equipment, welfare, the general hospital plant, water access (including fire plugs) and supply up to an average residential use, sewer access and use up to average residential, trash disposal up to average residential (except if privately contracted for), streets wherever the general public is not excluded (except for private

turnout), street lighting and bridges, the construction and maintenance of local government physical plants, e.g. as for water, sewer, libraries, schools, courts, parks and recreation, museums, fire, police (including the payment for any bonded indebtedness connected therewith), and the income in whatever form and pensions of all local government employees.

Those SPECIAL SERVICES required to be addressed by local government per Const Art XIII §13 are fire and police protection of private land and improvements, and excluding persons. This service is extended to include farm equipment, livestock and crops. [See RTC §410-414].

IV

GENERAL PROPERTY - INCOME - ITS VALUE TO FINANCE GENERAL SERVICES

1) Money is real tangible property [RTC §103, Civ C §14, C Civ P §17, Nordyke v Charlton (1899) 79NW1361]; and is the only

general property owned by all taxpayers in a district. All the other tangible properties are "special" and not generally owned by all residents in a district.

Each year, or payment event, present net income, however earned, whether it is from fee simple ownership or partial ownership through possessory interest, when severed from its source, is a new property. Therefore, a tax on this severed property, regardless of its source, is a property tax.

[Board of Revenue of Montgomery C. v Montgomery Gas-Light Co.(1879) 64Ala.269; Eliasberg Bros. v Grimes (1920) 204Ala.492,86So.56, 11ALR300; Ex parte Morrill-Doyle Realty & Ins. Co.(1925) 213Ala.697, 106So.63; State v Pinder (1919) 30Del.416, 108Atl.43,; Bachrach v Nelson (1932) 349Ill.579, 182NE909; Opinion of the Justices (1915) 77NH611, 93Atl.311; Kelley v Kalodner (Pa.1935) 181Atl.598; Evans v McCabe (1932) 164Tenn.672, 52SW2d159; Jensen et al v Henneford (Wash.1936) 53P2d607; Bronson v Henneford (Wash.1936) 53P2d607; Petroleum Navigation Co. v Henneford (Wash.1936) 55P2d1056; Culliton v Chase (1933) 174Wash.363, 25P2d81; See also Reed v Bjornson (1934) 191Minn.254, 253NW102, followed in Thompson-Parker Holding Co. v Bjornson (1934) 191Minn.271, 253NW110]. (citations from Traynor & Keesling in 24CLR493, note #55)

Uncapitalized, it is the measure of the new

general property (RTC §401) each person receives, [Bachrach v Nelson, 182 N.E.909, Wash. Pwr. Inc. v Huntley, 235P2d173, Civ C §748, C Art XIII §1 (1849-1974)]; it is the criterion that must be used to assess every resident's taxable property at any and all levels of government for general services.

Civ C §748 states:

> "The income of property...includes the rents, profits of real property, the interest of money, dividends upon stock, and other produce of personal property."

C Art XIII §1 (1849-1974) states:

> "The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership;..."

[Through deceit in the arguments for a constitutional change published in the VOTERS' PAMPHLET FOR PROPOSITION 7 of 1974, above clause and the word "shall" in the laws providing due process and equal protection and equal privileges and immunities were removed by respondents' initiative. [See Art I,§7(a) and §7(b).]

2) Intangible property, in the form of rights to future income, benefits received and/or value added, is the source of the income. It is not taxable for general services in that the income is not present and severable.

Beneath every income is a contract for the ownership of the fee simple right or a possessory interest in tangible and/or intangible properties. Though they are real, without changing ownership, the income from these rights are not present or severable and therefore not convertible into tangible present income. The cost to secure the fee simple right, or the fee to secure a partial interest, is the source of the income and is not taxable at any level of government for general government services, except in the case of its receipt as a portion of one's present annual income. To tax the rights to finance a general service amounts to taxing the future income to be derived from the operation under the con-

tract as if the income were already severable. Taxing intangible rights is like taxing the rights to life and liberty and the pursuit of happiness. For general tax purposes no one has a right to force the owners to convert them into tangible present income, for this damages the owner's constitutional right to possession and diminishes his value therein.

3) Therefore, present net income, severed from its source, is the criterion that must be used to assess every resident's taxable property at any and all levels of government to finance general government services. The receipt of income in one's person in payment for whatever service rendered, whether for service in the private sector or the public sector, must be assessed to satisfy the demands of Art XIII §1 requiring all property be taxed unless an exemption is specifically authorized by the state constitution or granted by laws of the United States. [Morrison v Barham (1960) 7CR442, 184CA2d267]. (For incomes exempted see

Art XIII §26 in Item V). And appreciation and paid for "value added" are not taxable entities at any level of government for the increase is not a present income until on its sale there is a capital gain. (Goodrich v. Edwards, 41 S.Ct 390, 255US527, and referred to in 197F2d508.) The gain is taxable for the general fund in the year of the sale.

Since the presence of income in one's person is tangible, it has a fair market value and/or a full value both of equal value. By measuring it uncapitalized at this moment satisfies Art XIII §1 requiring a fair market value or full value.

Income being the only general property and thus the proper property to be assessed for general services, and nowhere in the constitution is there a distinction made between taxation at different levels of government, it is arbitrary and unreasonable for the sovereign's employees in the first para. to RTC §17041.5 to declare income unassessable for local general

services.

V

ONLY THE INCOMES SPECIFICALLY ENUMERATED IN ART XIII §26(b) AND §26(c) ARE EXEMPTED FROM THE TAX FOR GENERAL SERVICES

Article XIII §1 declares:

> "Unless otherwise provided by this Constitution or the laws of the United States: (a) "All property is taxable and shall be assessed at .... fair market value. When a value standard other than fair market value is prescribed by this constitution or by statute authorized by this constitution, ... whether it be fair market value or not, shall be known for property tax purposes as the full value."

The demands of Article XIII includes the income from whatever property right and includes that from all partial interests however defined, since Art XIII §12 (a) and (b), as amended in 1976, states:

> "(a) Except as provided in subdivision (b), taxes on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment. And (b) In any year in which the assessment ratio is changed, the legislature shall adjust the rate

described in subdivision (a) to maintain equality between property on the secured and unsecured rolls."

Article XIII §19 taxes the properties of railroads and utilities, and certain other properties lying within two or more counties; and mandates that this property shall be subject to taxation to the same extent and in the same manner as other property.

Article XIII §26(a) declares:

"Taxes on or measured by income may be imposed on persons, corporations, or other entities...."

The only incomes exempted are those in Art XIII §26(b) where the income is from bonds issued by the State and local governments in the state; and in Art XIII §26(c) the income of certain non-profit educational institutions in the state.

Where Article XIII §§3,4,5,7.8,and 8.5 exempt certain properties from taxation it does not mean to exempt any person or corporation using them for a profit from the imposition of the tax. For notably these sections do not

speak to "income" from these properties.

Where Article XIII §13 calls for a separate assessment of land and improvements it means to assess them separately for that special service of their own fire and police protection since the incomes from these properties has already been assessed to finance general services. Section 13 does not mean to provide for the general service of protection of persons.

Traynor and Keesling, as reported in 24CLR493-511, wrote a good treatise on the taxation of income and land and improvements. They conclude there are some significant differences between the two types of property, income as one type of property and land and improvements as another, which should be considered in the scheme of local taxation. This is exactly what these petitioners have submitted above - that at the local level there has to be two assessments made to satisfy the mandate of Article XIII. Sections 1, 12 and

26(a) assess the general property of income when severed from its source to finance general services; and section 13 separately assesses private land and improvements for a special levy to pay for the purely private cost of its protection, but whose income has already been assessed under the general property tax. (See Item VII below).

VI

THE COURTS HOLD ALL EMPLOYEES' INCOMES ARE TAXABLE TO SUPPORT GENERAL LOCAL GOVERNMENT SERVICES

It is apparent the California Supreme Court considers the incomes of employees taxable for general local government services, for in 1978 in Weekes v Oakland, 21C3d386, 579P2d449, it held:

> "City employee license fees which exacted a fee for the privilege of engaging, within the city, in any business, trade or occupation or profession, which was measured by the employee's gross receipts in excess of $1,625 per quarter, which did not apply to compensation earned outside of the city, and which provided for a credit for an employee who had an ownership interest in a business subject to the city business license fee was not a prohibited municipal

tax upon income."

Shepard's cites the above opinion as controlling in 630P2d523, 171CR248, 175CR338.

The court also held that:

> "In statutes relating to business license taxes, the word business means that which occupies the time, attention and labor of men for the purposes of livelihood or for profit; ...A single tax broad enough to include all businesses, callings and trades within its ambit is a perfectly proper business tax, and in fact the typical municipal business license tax scheme is so comprehensive that virtually all businesses are covered. Such a tax does not, by virtue of its encompassing character, become an income tax;...the tax was a license fee on gross receipts ... allowed by the last paragraph of RTC §17041.5."

And the court also held:

> "Govt C §50026 (1968), prohibiting discriminatory municipal occupation taxes measured by employee compensation, is implied authority for a municipal occupation tax as measured by employee compensation despite the provisions of RTC §10741.5"

Where the employee is implied as the "conditional vendor" the court in Texas Co. v Los Angeles (1959) 52C2d55 held:

> "Continued enjoyment of benefits....is dependent on discharging the obligations to secure such benefits, and for tax purposes there is no logical basis for treating those

> obligations differently as they happen to run to lessor, conditional vendor, or mortgagee."

Similar holdings were made in J. Stone's dissent in Senior v Braden (1935) 295US422, Fidelity & C. Trust Co. v Louisville 245US54, Maguire v Trefry 253US12, Kirtland v Hotchkiss 100US49, Shaffer v Carter 252US37, Lawrence v Tax Comm. of Miss. (1932) 286US276, U.S. v Fresno County (1975) 123CR548.

The income from intangible rights in the form of interest-bearing contracts are also taxable for the general fund for these entrepreneurs are simply a different type of employee; they employ their capital. [See Kirtland v Hotchkiss, (1879) 100US491, 498, Savings Soc. v Multnomah Co. (1898) 169US421, Bristol v Wash. Co. (1900) 177US133, 141, Fidelity & Columbia Tr. Co. v Louisville (1917) 245US54.]

In City of San Francisco v Farrell (1981) 172CR116 the California Supreme Court held this tax is valid without a vote of the people and

that the tax (fee) could be lawfully withheld from the employee's wages after the fact of income or when severable from its source.

It follows that all residents in a local jurisdiction with incomes from whatever source, other than for welfare and those exempted by the constitution, are thus taxable for general local services. For we're all "in business" together with written or verbal contracts to employ our labor, or capital, or expertise, or influence, or whatever to obtain an income. In that the citizen expects to be protected in his occupation and pursuit of happiness, it is only proper that he pay his fair share towards financing local government that supplies these services.

VII

SUPPORTED BY CASE LAW, CONST ART XIII §13 MANDATES A SEPARATE ASSESSMENT FOR THE PROTECTION OF CERTAIN SPECIAL PROPERTIES

From the argument above, Const Art XIII §§1, 12, 19, 26(a) impose a tax on the net incomes of all taxpayers in a district or

municipality for general services, excepting only those indicated in Const Art XIII §§26(b) and 26(c); but then in Const Art XIII §13 it separately assesses the special properties of private land and improvements; in RTC §§410 - 414 the legislature included implements of husbandry in this assessment. The income from all properties, including that from the special properties, having already been assessed under the other articles for general services, mentioning these separately in section 13 indicates a necessity for an assessment for some special service. It could only be for their fire and police protection and not including the protection of persons. For it stands to reason that the owners of private land and improvements should bear the burden of this special service since it is not a benefit to the general public.

Supported by Case Law this separate levy must be limited to the benefits the separated properties themselves get from the tax. [Spring

St. Co. v City of Los Angeles, (1915) 170C24, 30, Harrison v Brd. of Sup., 44CA3rd at 856 (1975), Roberts v City of Los Angeles (1936), 7C2d477, 491, Lloyd v City of Redondo Beach (1932) 124CA541, 546-47, Honegger v Reclamation Dist. (1961) 190CA2d684, 692, Allen v Drew 44Vt.174 as quoted by J. Henshaw at p. 30 of 170C24.

The court held in the Spring St. case:

> "The return to the property owner by way of benefit is, under the constitutional limitations of our system of government, the basic foundation upon which rests the right to levy such a special assessment."

The present one percent times the market value of the fee simple rights to the special properties of land, improvements and equipment, as mandated under Const Art XIIIA §§1(a) and 1(b), is far in excess of the cost of this protection.

For example, in a typical assessment for the 1985-86 assessment year, the levy against the ownership rights to these acting petitioners' owner-occupied residence, APN 05-381-

09-000, exceeds a proper amount by $1,997.04. [See Item XIII, App 68.] Very likely every tax bill levied by the districts, cities, counties and the State Board in the state under the property tax scheme against the special properties is excessive in the same manner. C Art XIIIA setting a 1% tax rate is therefore improper. And the legislature must adopt laws to force districts, cities and counties to return to setting the local tax rate on the special properties pursuant to RTC §2151, for the cost to protect these properties will vary between each municipality.

VIII

THE STATUTES INDICATE THE RESPONDENTS INTEND TO ASSESS ALL TAXABLE INCOMES, BUT IN A CORRUPT MANNER (see Items IX and X)

From the argument in Items IV, V and VI above, Article XIII mandates two assessments at the local level: one for GENERAL GOVERNMENT SERVICES, including the protection of persons, on the market value of employees' incomes,

however earned and severed from their source and where the rights to property are not taxable; and, from the argument in Item VII above, one to provide for the SPECIAL SERVICE of fire and police protection of privately owned land and improvements .

Recently in order to satisfy the Article XIII requirement to assess all property:

The Calif. Attorney General in 1958 warned the legislature that they were in violation of the Cal Const. when he stated in 31 Ops Att 17:

> "Possessory interests in land and improvements are real property within the meaning of Article XIII of the California Constitution and, as a consequence, the Legislature is without authority to classify them as personal property or to afford them special tax treatment. Since section 107.1 of the Revenue and Taxation Code is violative of the California Constitution, it is unnecessary to consider whether it is in conformity with the equal protection clause of the Fourteenth Amendment to the United States Constitution."

In 1966 the respondents added the word "general" to RTC §401 and as amended in 1978 it states: "EVERY ASSESSOR SHALL ASSESS ALL PROPERTY SUBJECT TO GENERAL PROPERTY

TAXATION..."

In 1965 the respondents added paragraph two to RTC §17041.5 which permits a fee for the right to be in business based on gross receipts. And in 1968 it adopted Govt C §50026 permitting a fee or charge against the earnings of resident employees and nonresident employees as long as it was equal on both. The Calif Supreme Court in Weekes held this to allow an income tax. (See Item VI).

In 1968 and 1969 the legislature asserted it was its intention to tax all possessory interests where it stated in Section 2 of Stats.1968,* c. 771, p. 1547, §1, as amended by Stats.1969, c. 1509, p.3089, §6:

> "In amending Section 15606 of the Govt Code by this act, the Legislature declares that rules adopted relating to the taxability and valuation of possessory interest in publicly owned land shall be uniform and relate to all possessory interests. The State Board of Equalization is directed between the effective date of the act and Feb 28, 1971, to develop comprehensive rules relating to all types of possessory interests, factors which make such interests subject to taxation and factors relevant to the valuation of such

*Note: Referred to in notes to Govt C §15606

interests."

And in Section 3 of Stats.1968, c. 771, p. 1504, the Legislature provided:

> "Nothing in this act shall be construed as exempting any possessory interest subject to taxation."

In 1973 the respondents adopted RTC §405 indicating that it was their intention that the lessee's possessory interest is taxable by stating:

> "(a) Annually the assessor shall assess all the taxable property in his county, except state-assessed property, to persons owning, claiming, possessing, or controlling it on the lien date.
>
> RTC §103 (1939) states: "Property" includes all matters and things real, personal and mixed, capable of private ownership." [Civ C §§14, 748, 761, C Civ P §17].
>
> RTC §201 (1939) states: "All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code."

RTC §212 exempts certain "fees" and money from property taxation but no income from the use of these properties is exempted.

THE STATE BOARD ADMINISTERS THE MAJOR TAX LAW ITS IMPROPER ACTION PROMPTED BY MISCONSTRUCTED LAWS

a) Per the California Roster for 1981:

> The California Constitution and legislative statutes charge The State Board of Equalization with the duty of administering the MAJOR TAX LAWS,STATE AND LOCAL SALES AND USE, CIGARETTE, ALCOHOLIC BEVERAGE, MOTOR VEHICLE FUEL, USE FUEL, ELECTRICAL ENERGY SURCHARGE, INSURANCE GROSS PREMIUMS, PRIVATE RAILROAD CAR, EMERGENCY TELEPHONE USERS SURCHARGE, TIMBER; values STATE ASSESSED PROPERTY FOR LOCAL taxation; determines the degree of PROPERTY TAX ASSESSMENTS' conformity in the several counties; guides and directs their equalization; assists county assessors and prescribes rules and regulations for those assessors and county boards of equalization; and hears appeals from the FRANCHISE TAX BOARD.

b) The Board's duty over the local property tax scheme:

Under the General Local Property Tax scheme, except as noted below, the state board's duty is confined by Const. Art XIII §18 to equalizing the assessments among the counties. To implement this duty the respondents in Govt C §15606 made the board

responsible for administering the scheme by requiring it to prescribe rules and regulations for the county assessors and county boards of equalization to follow. And in this section the respondents made the state board rules mandatory on the local assignees. In Govt C §15615 the respondents assess a fine on those local assignees who refuse to follow the state board rules.

The State Board was given an additional duty in Const Art XIII §19 wherein, excepting the franchises, it is required to assess railroads and utilities, and certain other properties lying within 2 or more counties; and mandates that this property shall be subject to taxation to the same extent and in the same manner as other property.

c) The Board's action:

The Board gets its directions from the respondents and in strict conformance to para. one of RTC §17041.5 which with the words "shall not" disallows a local income tax, and RTC §16

which makes "shall" mandatory, the board adopted rules which arbitrarily gives "present net income severed from its source" a special privilege of immunity from local taxation. The respondents' second paragraph of RTC §17041.5 and Govt C §50026 permits, but does not force, local governments to charge a fee for the right to be in business. The respondents have not defined a possessive interest as a business, and RTC §§107, 107.1 and 405 contain the permissive word "may", therefore the board has assumed the right to assess only possessory interests in leases of tax-exempt property per Board Rule 21, long term leases for the extraction of minerals, gas and oil as per RTC §§107.2 and 107.3, and to assess the market value of private land, improvements and equipment. These board actions are prompted by misconstructed laws, and constitutes "arbitrary action" or "abuse of discretion" justifying resort to mandamus. (Wood v Waggoner, 293NW188,189, 67SD365).

X

THE RESPONDENTS REFUSE TO ASSESS ALL THE PROPERTY AND THROUGH SYSTEMATIC ERROR LEVY AN EXCESS BURDEN AGAINST THE OWNERSHIP OF SPECIAL PROPERTIES THE STATE BOARD AND CERTAIN COURTS JOIN IN THE OUTRAGE

The respondents interpreted the constitution to mean all property and interests therein taxable as measured on income severed from its source as proper for state general services (see Item VIII above). Then in a fatal error they adopted RTC §17041.5 which arbitrarily, without reason or justification, disallows a similar tax on income at the local level. In 56 CLR 1525 (1981) at 1543 Januta asserts the Calif. Const. was not intended to grant the power to levy an income tax exclusively to the state nor to prohibit such power to other governmental entities. And Hansen in 11 Santa Clara L.R. 343 (1971) at p. 361 asserts the interests of the state are not paramount to those of the city; and, in effect, stated the city has an inherent power to tax income; and the legislature's power to withhold

the right to tax income at the local level should be invalid. [See also Langer in 10 UCD L.R. 185, 205-206 (1977), and Traynor and Keesling in Items IV, App 33, and V, App 40.]

Ignoring the fact that general services have to be funded separately from special services, the respondents unjustifiably use Art XIII §13 as a vehicle to excessively tax the ownership rights to certain special properties for both general services and special services. And in the process no assessment is made against the incomes from sources other than those from these special properties. This is a gross systematic error since it amounts to doubling the tax on the ownership rights to the special properties in a scheme to subsidize the ownership of the usufructuary rights. [Flynn v City and Co. of San Francisco (1941) 115P2d3, 18C2d210, Redwood Theatres v City of Modesto (1948) 196P2d119, 86CA2d907].

The scheme, in effect, unlawfully allows incomes from all sources other than that from

the special properties to escape taxation contrary to Const Art XIII §1 mandating that all property be taxed unless an exemption is authorized by the state constitution or granted by laws of the United States. [Morrison v Barham (1960) 7CR442, 184CA2d267]. For evidence of the properties allowed to escape see the 1968 edition of State Board document AH501-30, a copy of which is hereby included in appendix as Exhibit #3, and Middleton's diagram of the omitted properties as Exhibit #4.

That is, where land and improvements afford an income, the scheme capitalizes the taxable present net income into a value comparable to the owner's cost to secure the rights to his property. And where land and improvements do not afford an income, in the case of owner-occupied residences, the assessment is made on the basis of the owner's use of his own property, again at the market value of the cost to secure the rights to the property. For evidence of this procedure see

RTC §423(3b) and State Board Rules 2,4,6,8,10,28 and the bottom line of AH501-30 (Exhibit #3) where the board asks for MARKET ANALYSIS (cost) or REPLACEMENT COST.

The State Board admits to the scheme and joins in the outrage where in AH501-21, (Exhibit #5, App 86) it states:

> "Generally, in the appraisal of property for taxation, the rights that are to be appraised are the fee simple absolute rights....The general practice is to assess the value of all of these rights to the owner of record. The practice is a great administrative convenience and has the sanction of the courts."

And at AH501-25, line 16, (Exhibit #6, App 87) it asserts:

> "The fee simple without encumbrances is the property right which must almost always be appraised by the assessor. Positive and negative interests created by contractual devices such as leases are ignored."

The court in San Pedro, etc. R.R.Co. v City of Los Angeles (1919) 180C18, 22, 179P393, admits the practice is a fact and joins in the outrage; the court states:

> "In practice, assessors usually enter the entire value of land and improvements on the

> tax roll without distinction between possessory and reversionary interests,..." And joining in the outrage the court further states: "... and since this practice results in a single amount reflecting both interests on the roll, the constitutional mandate that all property be taxed is obeyed."

In Simms v Co.of Los Angeles(1950) 35C2d303, 217P2d936, the court, where only the lessor was taxed and the lessee was exempted in the procedure, joined the improper act by making the devilish statement:

> "As between reversioners and possessors payment of the tax is a private arrangement." (see Lick v Austin, 43C590, 594-596, and San Pedro, supra.)

The Board in Board Rule 21 arbitrarily limits "taxable" possessory interest to a lease on tax-exempt land. This, in effect, means it has not assessed the leases and contracts synonymous to leases on private lands and improvements nor the contracts similar to leases on public lands and improvements.[See Exh. #4, App 85, for the omitted properties.]

The lessee-renter-employee has an economic advantage over the owner of the special

properties in that each year the owner of the special properties foregoes an income from the money invested in them equal to the interest rate on long term government bonds multiplied by their market value. That is, on these acting petitioners' owner-occupied residence they are foregoing approximately $23,400 income per year on their investment in their residence with a market value of $200,000 and with the present long term government bonds rate of 11.7 percent. The lessee-renter foregoes only the interest on one year's rental cost, and that, only if he pays it a year in advance.

It is a common statement that the lessor passes on to the renter the cost of property taxes on the rented property in the rental cost; and thus the renter need not be separately assessed for property taxes. But since for general services a lessee's net

income is a taxable real property this is a fallacious argument in that the lessee's income was never assessed. And, if it were true, the same fallacious reasoning would hold that the lessee need not pay any state or federal income taxes, for the lessor passes on to the lessee his state and federal income taxes.

In the case of income bearing property the respondents' scheme is one of "doubling" the income arising from the fee owner's rights to special properties in an unconscionable attempt to assess the income arising from the usufructuary rights and the fee owner's rights in one assessment against the owner of the fee. Thus structured the assessment does not measure the present net income of any of the assessees, nor is it levied against the rightful owners thereof. [Hoeper v Tax Commission (1931) 284US206, 215]. Hence it does not meet the constitutional requirement for general fund financing. The market value of the fee simple right may be construed to be proper for

assessing for that special service of fire and police protection of land, improvements and equipment, but only when holding the one percent rate in C Art XIIIA invalid, and a rewrite of RTC §2151 is made to call for two tax rates - one for the tax against income and one for the special assessment against land, improvements and equipment.

XI

GOVERNMENT EMPLOYEES' RIGHT TO TAX TO FINANCE THEIR INCOME IS A VALUABLE PROPERTY RIGHT. THEIR INCOME WHEN SEVERED FROM THE SOVEREIGN IS TAXABLE AT ALL LEVELS OF GOVERNMENT FOR THE GENERAL FUND

Government employees' income when severed from the sovereign is taxable to support general services at all levels of government. The constitution and statutes granting local, state and federal agents the right to levy and collect taxes, fees or assessments in perpetuity, said collections being paid to these same and other public and third parties, convey a freehold interest in the land, and is,

in effect, a sale of a part of the land. (Trans. Oil Co. v Emmerson, 16ALR507). In fact, were it not for the corruption in respondents' scheme, that is the presence of the permissive word "may" in RTC §107.1, their incomes would be taxed for the general fund pursuant to State Board Rule 21; for their contracts are usufructuary and synonymous to leases for operating in, on or for the use of tax-exempt land and improvements. The courts have held these rights are real property. [Civ C §§14,748,761, C Civ P§17, Old Art XIII§1].

> Civ C §14 and C Civ P §17 state: "The word 'property' includes both real and personal, and the words 'personal property' include money, chattels, goods, evidences of debt, and things in action..." [Nordyke v Charlton (1899) 79NW1361];
>
> "Property, in the strict legal sense, is an aggregate of rights which are guaranteed and protected by the government..." (FL,H&P v State, 121N.Y.S.536); "It extends to every species of right and interest, and includes real and personal property..." (81F2d143,150);
>
> "A 'leasehold' is an estate in realty held under a lease, is separate from the fee from which it has been carved, and is 'property' which the law recognizes as a thing of value

..." [Greene Line Terminal Co. v Martin, 10SE2d901, Lynch v Cunningham (1933) 21P2d154];

"An instrument granting for the purpose of operating for oil and gas in a certain tract of land, to continue for an indefinite duration of time, conveys a freehold interest in the land to which it applies, and is, in effect, a sale of a part of the land." [Transcontinental Oil Co. v Emmerson, 16ALR507, Bakersfield & Fresno Oil Co. v Kern Co.(1904), 144C148, 148F757, 8FS188, San Pedro etc R.R.Co. v Los Angeles(1919) 180C18, 179P393, 13F2d817, 8FS188].

Civ C §748 states: "The income of property...includes the rents, profits of real property, the interest of money, dividends upon stock, and other produce of personal property."

Civ C §761 defines a leasehold as an estate in real property. [Parker v Superior Court (1970) 9CA3d397].

C Art XIII §1 (1849-1974) defines money as property. [See quote at App 34].

Government employees, local, state and federal, are in the business of government. It is the biggest, most profitable business in the whole United States. And their right extends into perpetuity with each employee owning a portion of that property. It occupies their

time, attention and labor for the purpose of a livelihood and for a profit. [Weekes v city of Oakland(1978) 21C3d386, 146CR558]. There is no contract more perpetual and less tenuous than a government employee's right to tax the general property of income for the general fund to pay his wages. The right is unassailable by vote of the people as was held by the Calif. Supreme Court in City and CO. of San Francisco v Farrell (1981) 172CR116. Therefore all employees' property rights are real and usufructuary and the income from them is taxable at the local level to support local general services. [See Item XII, App 65.]

These respondents have deceived themselves into thinking themselves to be the sovereign. The sovereign's rights to land and improvements being tax-exempt, they are claiming the sovereign's tax collections when severed and in their personal possession is also tax-exempt. They are not the sovereign. They are private persons in the employ of the sovereign. They

do not have the right to exempt their own incomes from the general tax for the support of the general fund. They have granted themselves and other employees an untaxed privilege that owners of private businesses and the taxed special property owners are thereby unnecessarily forced to subsidize.

In this process, with the support of the members of the bar, they have deceived themselves and the general public with whom they maintain a fiduciary relationship. And in many suits at law they have cleverly deceived the courts into upholding their infamous scheme which extorts an excessive tax from the special property rights to subsidize the incomes from the other valuable, but untaxed, property rights.

XII

POSSESSORY INTEREST PROPERTY - LEASES AND CONTRACTS SIMILAR TO LEASES

POSSESSORY INTERESTS, that is INTEREST IN LEASES AND CONTRACTS SIMILAR TO LEASES

possessed by lessees, employees and lenders, ARE valuable properties ANNUALLY TAXABLE at the local (district and municipal) level measured on the basis of their present net income TO FINANCE GENERAL LOCAL GOVERNMENT CONSTRUCTIONS AND SERVICES [C Art XIII §1, RTC §§103, 201, (107, 107.1, 405 with word "may"), 201, 405, Civ C §14, 748, 761, C Civ P §17, 31 Ops Att Gen 17(1958)] in that they are:

1) REAL PROPERTY within the meaning of Art XIII of the California Const. and, as a consequence, the Legislature is without authority to classify them as "personal" or to afford them special tax treatment.[31 Ops Att Gen 17(1958)]. In Bakersfield and Fresno Oil Co. v Kern Co.(1904), 144C148, and in San Pedro etc. R.R.Co. v. Los Angeles (1919), 180C18, 179P393, at note 4, the Calif. Supreme Court held that possessory interest in land and improvements is "real property." [But see court impropriety App 57-58].There was no distinction made between the taxable value of leases on tax

exempt land and improvements and those on private lands, for the value of such possessory interests to a lessee or employee is the same whether on private lands or on tax exempt lands; in 31 Ops Att Gen 17 (1958) The Calif. Att. General made no distinction either;

2) USUFRUCTUARY, allowing the possessor the rights of using and enjoying the profits of a thing belonging to another without impairing the substance, and as such they are taxable properties. [Douglas Aircraft v. Byram (1933), 57CA2d311, U.S. v. Fresno Co. (1975), 123CR548, Lawrence v. Tax Comm. (1932), 286US276];

3) More valuable than the fee owner's rights, for their contracts convey absolute rights to a net income ahead of any net income to the fee owner; the fee owner's contract extends him only a right to try to make a net income;

4) Interdependent with that of the owner of the fee;

5) Of sufficient moment to sustain an

action in trespass; [S.F. Soc. v. Leonard, 17CA254, 119P405];

6) Of sufficient moment to demand a profit, i.e. an income above the subsistence level.

> "LEASE" AND "HIRE" are synonymous contracts imposing reciprocal obligations, to which consent alone is sufficient, and by which one party gives to the other the enjoyment of a thing, or his labor at a fixed price [Civil Code La. Art 2669], either for life, or for a certain period of time, or during the pleasure of the parties [Fenner v. City of Juneau, 97F2d649, 657, Smith v. Royal Ins. Co., 5FS435, 437, State v. Moore, 12C56, People v. Shearer, 30C645], Webster's Dict.

XIII

THE IMPROPER SCHEME DIMINISHES THE MARKET VALUE OF THE OWNER'S RIGHTS TO THE SPECIAL PROPERTIES

In the case of these acting petitioners' residence, APN 005-381-09, the tax levy for the 1985-86 assessment year is $2047.04 and the estimated cost of fire and police protection of the residence is $50.00; hence the levy is excessive by $1997.04. (See Exhibit #1, App 83, "Assessment Notice" and Exhibit #2, App 83, "Consolidated Tax Bill #026427." In that the

excess levy continues year after year into perpetuity it can be capitalized to find a market value. Using 6%, the approximate cap rate used by the county assessors, the unlawful procedure results in diminishing the market value of this owner-occupied residence by $33,284.00 [$1997.04 divided by .06]. TO STATE IT ANOTHER WAY: THROUGH THIS ANNUAL EXCESS LEVY GOVERNMENT EMPLOYEES HAVE ILLEGALLY CONVERTED UNTO THEMSELVES AN OWNERSHIP RIGHT IN (possession of) THE FEE SIMPLE RIGHTS TO THE PETITIONERS' PROPERTY AMOUNTING TO $33,284.00. It is most likely true that a similar illegal conversion is made against every Assessor Parcel Number throughout the state.

XIV

THE COURTS HOLD PERMIT FEES SUPPORTING GENERAL SERVICES INVALID

In addition to the impropriety in the property tax scheme local governments, depending on the rights granted them by the respondents, extort exorbitant permit fees from

owners of land and improvements to finance many general government services, e.g. to provide water and sewer connections, streets and new school classrooms.

It is conceded a municipality has the right to control the nature and scope of the use of land within its jurisdiction. But that right does not extend to a right to force the land and improvement owner to pay for general local government services through the permit fee process, where other citizens with a different class of property are omitted in the process but equally benefit from the service provided.

A case in point is the recent use by certain municipalities of a so-called School Impact Fee levied against developers, and therefore future new homeowners, to provide new classrooms for school districts impacted by increasing student enrollment due to the presence of new residential and commercial building within its area. The municipalities

have depended upon the rights granted them in Govt Code §§65970-74 of the 1977 statutes.

However, in B.I.A. of So. Calif. v City of Oxnard, (1984) 150CA3d535, 198CR63, the 2nd dist app. court held:

> "The fee adopted by the City of Oxnard is a tax for general purpose capital needs benefiting the community as a whole... is an invalid regulatory fee, therefore a tax...an unreasonable exercise of police power...and finds it is an arbitrarily conceived exaction as a mask for discriminatory taxation...It is therefore void, where it does not have legislative authorization, and in that it had not been approved by a two-thirds vote of the electorate of the city."

The court's reasoning can be held conclusive on all taxes and assessments used by municipalities to arbitrarily tax special properties and rights and exempt the general property to finance general local services. A two thirds vote of the electorate would not have made it valid for a majority does not have a right to force a minority of the taxable property or a minority of the electorate to finance a general benefit. For the courts have a duty to protect the minority of an electorate

against an arbitrary will of a majority.

The Calif. Supreme Court later overturned the Second Appellate's above holding; however, the court probably would have sustained the lower court's ruling had the pleadings considered the fact that para. one of RTC §17041.5 is invalid on its face.

XV

THE PRESENT SCHEME VIOLATES MANY STATE AND FEDERAL LAWS

The present systematic, unjustified levy against the rights to the assessed properties amounts to:

1) Constructive Fraud against the owners of the special properties for Civ C 1573 states:

> "Constructive fraud comprises all acts, omissions, and concealments involving a breach of legal duty, trust, or confidence, and resulting in damage to another." [Arbuckle Estate v (1950) 98CA2d562, 220P2d950, Grenier v Harley (1957) 250F2d539, Santa Cruz Co. v McLeod (1961) 189CA2d222, 11CR249.]

2) A violation of Penal C §532; for, if the excessive and/or improper tax is not paid, the government officers separate the owner from his

property by selling it to another party pursuant to RTC §3436-45. Hence, the action amounts to larceny. Penal C §532 states:

> "Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained."

3) A violation of Pen C §518 and/or 519 - Extortion; for within the scheme the special properties are excessively taxed by local officials under Govt C §§54990-95 and 65970-74 by withholding official action to extort fees to perform general services;

In Shephard, In re (1911) 161C171, 118P513, the court stated:

> "It is extortion for public official to demand money as condition of doing what it is his duty, as trustee of public trust, to do..."

Under Theft by Extortion the ABA Model Penal

Code §223.4(4) states:

"A person is guilty of theft if he purposely obtains property of another by threatening to ...withhold action as an official, or cause an official to...withhold action;"

AND SINCE C Art III §1 ACCEPTS THE FACT THAT THE UNITED STATES CONSTITUTION AND THE LAWS MADE IN PURSUANCE THEREOF ARE THE SUPREME LAWS OF THE LAND (U.S. Const Art VI (2), THE ACTION IS:

4) A denial of U.S. 14th amendment rights to due process and equal protection, equal privileges and immunities [Const Art 1§7(a,b)];

5) A violation of the assessed special property owners' civil rights to equal treatment under taxation, 42US1981;

It was said by the court in Ridinger v Gen. Mtrs. Corp., 325FS1089:

"The ultimate purpose of all civil rights legislation is to guarantee non-discrimination in treatment and equality before the law, and to achieve such a purpose, civil rights

legislation generally requires that each individual be considered on the basis of his individual capabilities and not on the basis of any characteristics generally attributable to a group."

6) A violation of 42US1983 (deprivation of rights), for it improperly attacks the rights to property to finance general government services instead of attacking income severed from its source;

7) A violation of 42US1985 (conspiracy to interfere with civil rights), for many government officers are involved in an intentional "taking' of property;

8) A violation of 42US1986 (neglect to prevent conspiracy), for the governor and the attorney general and their counsel have the duty to prevent a conspiracy;

9) A violation of 42US2000(d) (unlawful assistance through the tax system), for all the persons whose incomes are not assessed for the general fund are receiving benefits that they

did not pay for but which are being paid for by the land, improvement and equipment owner [McGlotten v Connally (1972)338FS448, 84CJS Taxation §30, note 82, NML Ins. Co. v Suttles, 38SE2d786, 329US801]; and it lacks the required uniformity to raise revenue for general purposes, [Hamilton v Arch Cons. Dist 75P2d707, 710, 42N.M.86, 61CJ p106, note 84, State v Ingalls 135P1177, 1180];

10) A violation of 18US1341 (Mail Fraud) since the improper assessments and excessive tax bills are sent through the United States mails [U.S. v Lavin, D.C.Ill (1981), 504FS1356];

11) A violation of the Racketeer Influenced and Corrupt Organization Act (RICO) of 1970, 18USC §§1961-68 since it violates 18US1341. [U.S. v Mandel(1976) 415FS1025, U.S. v Margiotta 688F2d108 (2d Cir. 1982), U.S. v Lavin, supra.]

XVI

THE RESPONDENTS' SCHEME FOR RECOVERY OF EXCESS TAXES PAID IS IN ITSELF A DEPRIVATION OF DUE PROCESS AND EQUAL PROTECTION BUT PROPER FOR A SCHEME LEVIED ON THE PROPERTY OF NET INCOME

The courts have held that a "tax" is a levy that can be used for the general fund (Weekes v Oakland, supra), and that a "special assessment," a "regulatory fee," or a "capital fee" cannot be applied to the general fund [Spring Street Co. v Los Angeles, supra, Bldg. Ind. Assoc. v Oxnard, supra]. Therefore, the present scheme of allowing the excessive "special assessments" made against special properties to be placed in the general fund are in violation of the courts' recent interpretations of the constitution.

The whole lengthy, time-consuming and expensive procedure allowed an assessee who has been discriminated against to challenge an assessment, or an excess levy, to prove the obvious fact that his property has been unlawfully "taken" denies due process. For

even if he does file a claim the statutes deny him any recovery.

The statutes:

1) RTC §5141 requires the assessee to apply for a reduction in the assessment and to exhaust administrative remedies even though it is obvious he will lose before the local board of equalization; Westinghouse Elec. Corp. v County of Los Angeles (1974)42CA3d32, 116CR242].

2) C Art XIII §32 disallows a court process before paying the tax;

3) Govt C §945.6 requires a taxpayer pay the tax under protest and file a suit in Superior Court;

4) CCP §117.8(a) disallows an assessee-plaintiff to appeal an adverse court decision before the small claims court; but, ununiformly, if the defendant, who in this case may be a government employee, receives an adverse decision he is allowed to appeal to the superior court where he is protected by

government paid counsel;

5) RTC §3436 mandates a sale of land and improvements for nonpayment of the tax;

6) RTC §4807(1977) outlaws an injunction against collection of property tax;

7) RTC §4808 outlaws recovery of excess taxes paid only to that time when the statutes are changed.

The respondents' procedure above is predicated upon the assumption that the local assessor has assessed every local resident's taxable net income, his mercantile character, (everyone being some kind of employee) [Brookfield v Kitchen, 163Mo.546, 63SW825, State v Morgan, 2SD32, 48NW314, Weekes v Oakland, supra], and that the local board of equalization has given him a just and timely court hearing. For only under those circumstances would the procedure have some relevance. But in that the scheme exempts most all of the taxable net incomes it denies due

process and equal protection and amounts to a fraud on the taxed properties.

IN CONCLUSION

It is reasonable to conclude that the constitution mandates a tax at the local level on net incomes severed from their source to finance general government services, and a special assessment against the ownership rights to land, improvements and equipment to finance only their protection. These two components of local taxation are rights guaranteed by the constitution that will not countenance any legislative interference. [Delaney v Plunkett, 146Ga547, 91DE561, 567, L.R.A.1917D, 926, Ann. Cas. 1917E, 685].

Therefore:

1) The respondents are overreaching, amounting to an outrageous abuse of discretion, where in RTC §17041.5 they disallow an income tax at the local level for local general district and/or government services; it is a

clear and palpable error creating a myriad of injustices, [People v Ruissel, 70CR210, 215, 443P2d794. 69C2d187. Nicoletti v Lizzoli, 177CR685, 688, 124CA3d361];

2) Until the respondents adopt and levy a tax at the local level against all residents' general property of net income to finance the local general fund all State and Federal disbursements within the state are invalid, and all local collections, including the income from the lottery, lack constitutional support except those as the result of police fines;

3) Until the respondents limit the levy against the ownership rights to all special properties to the cost of fire and police protection of the properties themselves, all local collections lack constitutional support except those as the result of police fines.

Respectfully submitted

Dated: December 9,1985

/s/ Robert L Middleton
ROBERT L. MIDDLETON

/s/ Marian S. Middleton
MARIAN S. MIDDLETON

Plaintiffs Acting In
Propria Persona
211 Coral Court,
Pismo Beach, Calif 93449
Tele 805-773-5135

VERIFICATION [CCP §§446, 1086, 1109 2015.5]

We Robert L. and Marian S. Middleton, are the acting petitioners in this proceeding. We have made the foregoing Petition and Points and Authorities in support thereof and know the contents thereof. The same is true of our own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, we believe it to be true. We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 9 , 1985 at Pismo Beach , California.

/s/Robert L. Middleton & Marian S. Middleton

NOTIFICATION OF AMOUNT OF ASSESSMENT

NOT A TAX BILL

DICK FRANK, ASSESSOR
SAN LUIS OBISPO COUNTY
CALIFORNIA

DUE TO PROCESSING SCHEDULES EXEMPTIONS MAY NOT SHOW ON THIS CARD. ALLOWED EXEMPTIONS WILL APPEAR ON THE ASSESSMENT ROLL. YOU WILL BE NOTIFIED BY THE ASSESSOR OF ANY EXEMPTIONS NOT ALLOWED.

THE BASE OF TAXABLE VALUE IS FULL VALUE PER COUNTY ASSESSED PROPERTY IS 100% EXCEPT AS OTHERWISE PROVIDED IS THE REVENUE & TAXATION CODE STATE OF CALIFORNIA.

ASSESSMENT YEAR	TAX RATE AREA	PARCEL NUMBER	SUB
	004-016	005-381-09	000
	TAX RATE AREA	ASSESSMENT NUMBER	CODE
1985-86	004-016	005,381,009	000

VALUATION BASE DATE 03/81 CODE N

ASSESSED OWNER AS OF FIRST DAY OF MARCH

05,381,009

MIDDLETON ROBERT L ETAL
211 CORAL CT
PISMO BEACH CA 93449

PROPERTY VALUATION
ASSESSED AS OF THE FIRST DAY OF MARCH

PROPERTY TYPE	FULL VALUE	TAXABLE VALUE
LAND	$75,027	$75,027
IMPS	$125,639	$125,639
EXEMPTIONS		
HOX	$7,000	$7,000

DATE OF NOTICE: 07/30/85

PLEASE SEE REVERSE

EXHIBIT #1
REFERRED TO AT APP 68

JOINT CONSOLIDATED TAX BILL

FISCAL YEAR 7-1-85 to 6-30-86

CITIES, COUNTY, SCHOOLS AND ALL OTHER TAXING AGENCIES IN SAN LUIS OBISPO COUNTY

SEE IMPORTANT INFORMATION ON REVERSE SIDE

ROLL	CORTAC #	TAX RATE AREA	PARCEL NUMBER	BILL NUMBER
1		004-016	05-381-09-000	026427

PROPERTY DESCRIPTION: CY PB TR 558 LT 9
ASSESSMENT NUMBER: 005,381,009

FRANK L. FREITAS, COUNTY TAX COLLECTOR
ROOM 203 COUNTY GOVERNMENT CENTER
SAN LUIS OBISPO, CALIFORNIA 93408

ASSESSED OWNER: MIDDLETON ROBERT L ETAL

MAIL TO: MIDDLETON ROBERT L ETAL
211 CORAL CT
PISMO BEACH, CA 93449

TAXING AGENCY	RATE/$100	AMOUNT
MAXIMUM TAX RATE	1.000	1930.67
LUCIA MAR UN-LOAN	.013	25.17
CUESTA COLEG BOND	.014	27.11
PISMO BEACH-BOND	.023	44.54
STATE WATER PROJ	.007	13.55
GEN TAX SUBTOTAL	1.057	2047.04

PROPERTY VALUE ALLOCATION		TAXABLE VALUE
LAND		75027
IMPROVEMENTS		125639
PERSONAL PROPERTY		
FIXTURES/EQUIPMENT		
LESS: EXEMPTION (code explained below)	A	7000
NET PROPERTY VALUE		193666

COUNTY ASSESSED PROPERTY IS ASSESSED AT 100% OF TAXABLE VALUE OR AS PROVIDED BY LAW

EXEMPTION CODES

1—VETERAN 3—WELFARE A—HOMEOWNER
2—CHURCH 4—CEMETERY

REDUCTION DUE TO HOMEOWNER'S EXEMPTION

1. TAXABLE VALUE OF THE PROPERTY	200666.00
2. HOMEOWNER'S EXEMPTION	7000.00
3. TOTAL TAX RATE	1.057
4. GROSS TAXES PRIOR TO THE APPLICATION OF HOMEOWNERS EXEMPTION	2121.03
5. TAX REDUCTION ATTRIBUTABLE TO THE STATE FINANCED HOMEOWNER'S PROPERTY TAX RELIEF PROGRAM.	73.99

FOR TAX INFORMATION PURPOSES
KEEP THIS STUB FOR YOUR RECORDS
NO RECEIPT WILL BE SENT
YOUR CANCELLED CHECK
IS YOUR RECEIPT

WE ACCEPT AS NEGOTIABLE INSTRUMENTS ONLY CHECKS AND MONEY ORDERS DRAWN IN U.S. DOLLARS ON U.S. BANKS.

FIRST INSTALLMENT	SECOND INSTALLMENT	TOTAL
1023.52 DUE NOV. 1, 1985 DELINQUENT DEC. 10, 1985	1023.52 DUE FEB. 1, 1986 DELINQUENT APRIL 10, 1986	2047.04 TAXES DUE

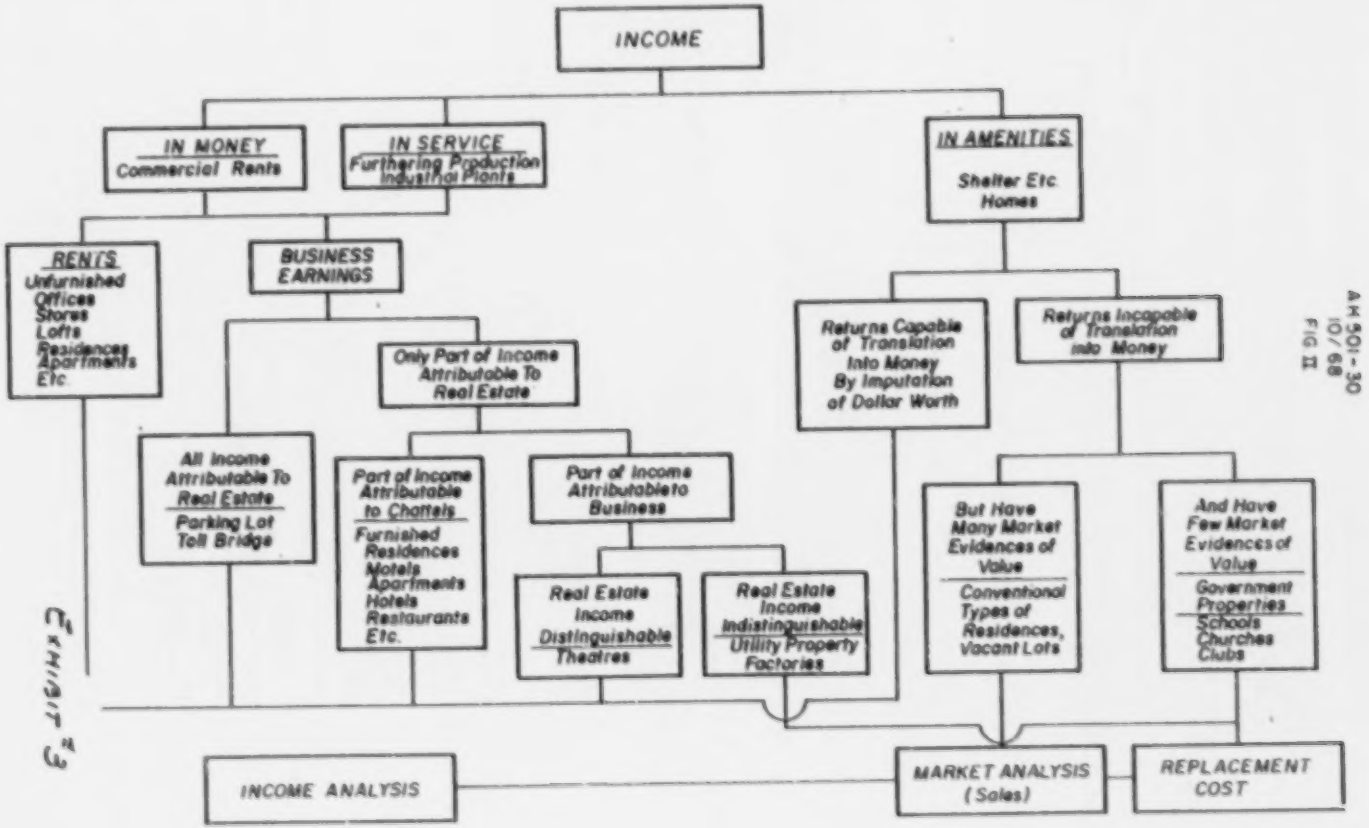
EXHIBIT #2

REFERRED TO AT APP 68

Figure II

APPRAISAL PROCEDURE MOST INDICATIVE OF VALUE

ACCORDING TO TYPE OF INCOME



AH 501-30
10/68
FIG II

EXHIBIT "3"

Referred to at App 56

App 84

CORRECTIONS TO AH5G1 PER R.L.MIDDLETON

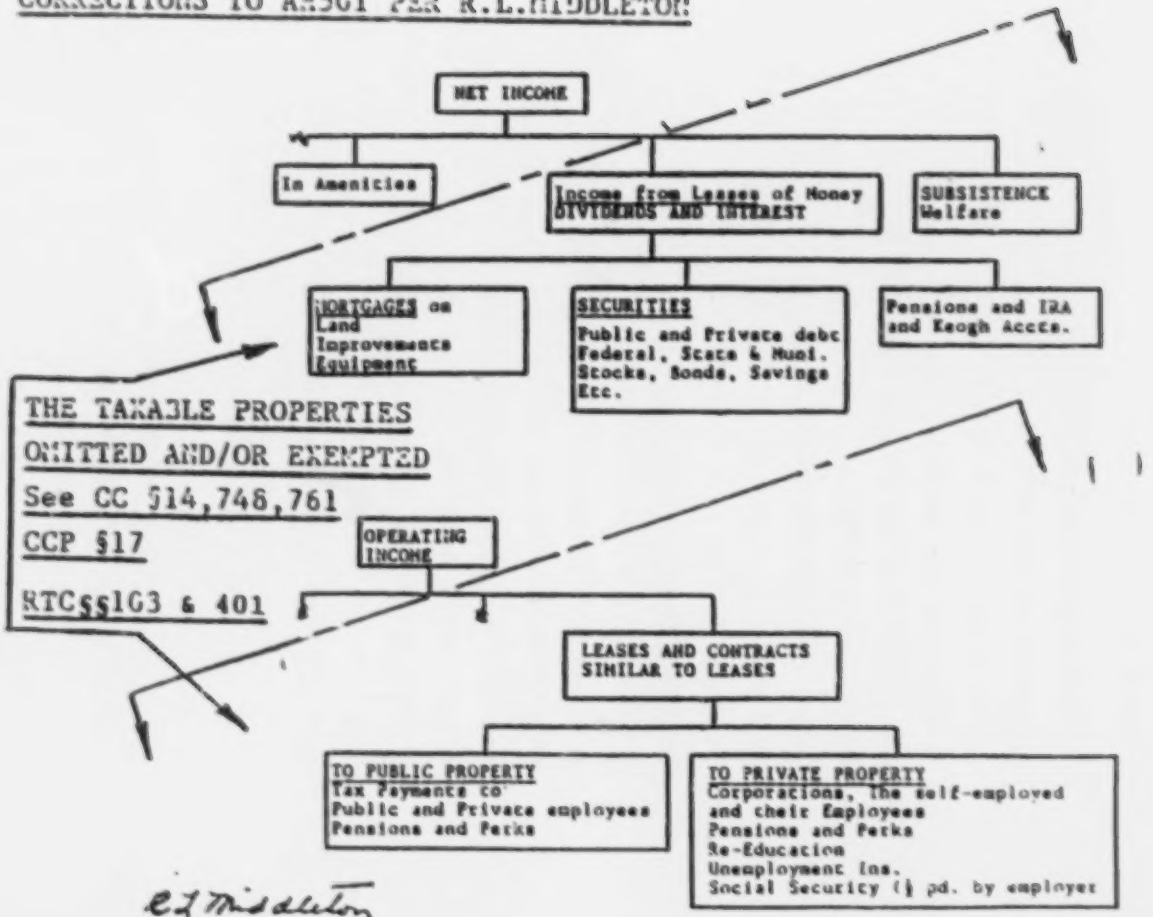


EXHIBIT #4

R.L. Middleton
7-9-83

Referred to at App 56

App 85

property. It is logical and proper that all property should be valued on the basis of the stage of production in which it is found on the first day in March.1/ In the case of a retailer's inventory, the property must be appraised as a unit on the basis of what a similar businessman would pay were he to buy the inventory. If the retailer is leasing his property to consumers, then the goods have moved from the retail stage to the final stage. They should be valued accordingly.

F. PROPERTY RIGHTS TO BE APPRAISED

Generally, in the appraisal of property for taxation, the rights that are to be appraised are the fee simple absolute rights.2/ Fee simple absolute means the complete and unencumbered ownership subject only to limitations imposed by government through the use of eminent domain, taxation, and police powers. These are the maximum quantity of rights. The general practice is to assess the value of all of these rights to the owner of record. The practice is a great administrative convenience and has the sanction of the courts.3/ However, it does create

1/ Government Code, Section 43002, requires the assessor to assess all locally assessable property as of 12:01 a.m. on the first day of March each year.

2/ In the case of possessory interests, the fee is exempt and the property rights that are appraised are the full fee rights, or the full rights on the basis of a restricted use, minus the reversion and minus an allowance for other non-use lease restrictions.

3/ See Three G Distillery Corp. v. Los Angeles County, 46 Cal. App. 2d 498; Graciosa Oil Co. v. Santa Barbara, 155 Cal. 140. But the assessment to either the vendee or the vendor under a conditional sale contract is not invalid. (Sherman v. Quinn, 31 Cal. 2d 661.)

EXHIBIT "5

Referred to at App 57

at different production stages, such as manufacturing, wholesale, retail, etc., the problem is not complex. In other cases, where the goods move from the manufacturing to the retail level without a transfer of ownership (as is sometimes the case with subdivision land and business inventory), the problem is extremely difficult. Nonetheless, the task of the appraiser is clear; he must estimate the stage of production and appraise on the basis of that stage.

The property rights that are being appraised have an obvious influence on market value and must be identified before their market value can be estimated. A leasehold interest in a property is usually substantially less valuable than the full interests. Fee appraisers are often called upon to appraise the contract rents and the reversion; this is not correct appraisal procedure for property assessment purposes. The fee simple without encumbrances is the property right which must almost always be appraised by the assessor. Positive and negative interests created by contractual devices such as leases are ignored.

H. IMPORTANT ECONOMIC CHARACTERISTICS OF REAL ESTATE

The general analysis of value that has been made applies to all economic goods, including real estate. Real property valuation is simply an application of the general principles to a specific type of economic good. The values are determined basically by the utility and scarcity factors. However, there are some special characteristics of real estate that create different problems in the application of general economic principles.

EXHIBIT #6

Referred to at App 57

BEST A

1974

7 DECLARATION OF RIGHTS

Ballot Title

DECLARATION OF RIGHTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Reorganizes and substantively amends various provisions of Article I and relocates portions of Articles IV and XX of California Constitution. Amendments include, among others, right to interpreter at state expense for criminal defendant who cannot understand English, provision that court may grant release on own recognizance, provision that property rights of noncitizens to be the same as for citizens, and revision of eminent domain provisions. Deletes, among others, provisions respecting criminal libel actions, provisions regarding right to sell or rent real property, provisions concerning acquisition of lands for public improvements. Financial impact: No increase in government costs.

FINAL VOTE CAST BY LEGISLATURE ON ACA 60 (PROPOSITION 7):
ASSEMBLY—Ayes, 57 Noes, 16 SENATE—Ayes, 27 Noes, 4

Analysis by Legislative Analyst

PROPOSAL:

This proposition revises Article I of the State Constitution, which declares the fundamental rights of the people of the state. The proposition (1) deletes obsolete provisions, (2) clarifies existing law, (3) puts into the Constitution some rights which now exist in the federal Constitution, (4) defines the rights of those charged with crime, (5) authorizes the Legislature to revise eminent domain and grand jury proceedings, and (6) deletes material suitable for statutory enactment.

Obsolete Provisions Deleted. The proposition deletes two provisions from the California Constitution because the United States Supreme Court has found they conflict with the federal Constitution. One provision relates to trial court procedure when a person accused of a crime chooses not to testify on his own behalf. The other provision relates to discrimination in real estate transactions.

Clarification of Existing Law. First, the proposition says the noncitizens have the same property rights in California as citizens. Second, the proposition says that rights guaranteed by the State Constitution are not dependent on those guaranteed by the federal Constitution.

Federal Rights in State Constitution. The proposition puts the following three rights into the State Constitution. These rights presently are contained in the federal Constitution.

(a) The Legislature shall make no law respecting the establishment of religion.

(b) A person may not be deprived of life, liberty, or property without due process of law.

(c) A person may not be denied equal protection of the laws.

Rights of Persons Accused of Crime. Presently the State Constitution gives specific rights to persons accused of crime. This proposition adds the following:

(1) The accused person has the right to be confronted with the witnesses against him.

(2) The accused person has a right to have the assistance of a lawyer.

(3) The accused person has a right to be personally present with a lawyer at the trial.

(4) If the accused person does not understand English, he has the right to an interpreter.

(5) Instead of being released on bail prior to trial, the accused person may be released on his or her own recognizance at the discretion of the court.

These rights already exist either in the United States Constitution or in present law. The amendment makes them part of the California Constitution.

Revision of Eminent Domain Procedure. If a state or local government takes real property for public use, the owner of the property has a right to be compensated. If the owner of the property and the government disagree over the proper amount of compensation, the dispute is settled by a trial.

Presently, the government may take possession of the property before the trial takes place by depositing money with the court as security for payment. The court decides how much the security deposit must be. This procedure is called "immediate possession."

The present Constitution limits the power to take immediate possession to specified governments, in specified circumstances, and for specified uses. This proposition will allow the Legislature to determine when immediate possession may take place, and who may act as a condemnor.

Grand Juries. Presently the Constitution requires each county to summon a grand jury once each year. Without changing that requirement, this proposition allows the Legislature to provide for summoning more than one grand jury each year.

Deletion of Material Suited for Statutory Enactment. The proposition deletes from the Constitution (a) detailed rules of criminal indictment procedure and (b) detailed rules of procedure in criminal prosecutions for libel.

FISCAL EFFECT:

This proposition does not increase government costs.

EXHIBIT #7

Referred to at pg. 11

VAILABLE COPY

7 Declaration of Rights

Argument in Favor of Proposition 7

YOUR BILL OF RIGHTS

Proposition 7 contains most of the recommendations of the California Constitution Revision Commission for Article I. This proposal was adopted by the Legislature after 4 years of study and consideration in Committee and after answering the questions of all the individuals and organizations concerned with California's "Declaration of Rights" Article.

There is no known opposition to Proposition 7.

STRENGTHENS YOUR INDIVIDUAL RIGHTS

Proposition 7 revises Article I of the California Constitution by removing material that has been declared unconstitutional, or is not of constitutional importance. Proposition 7 contains all rights presently enjoyed by Californians and places in our State Constitution some of the rights enjoyed by Californians as citizens of the United States, but which are not presently in our State Constitution. For example, Proposition 7 adds to our Constitution the right of all Californians to due process of law, the right in a criminal proceeding to be confronted with witnesses, and a prohibition against the State's "establishment of religion". These rights and safeguards are not presently in the California Constitution, but should be.

VOTE "YES"

A "yes" vote will help modernize and shorten California's Constitution. It will help finish Constitution Revision which has been in process for nearly 10 years. Make sure that your rights are clearly and strongly stated. Join the many groups who support this revision of an important article of the Constitution. The organizations presently endorsing Proposition 7 include the League of Women Voters, both Houses of the State Legislature and other organizations and individuals interested in the protection of our society and the civil rights of all Californians.

Join us in a YES vote for better government.

JUDGE BRUCE SUMNER
Chairman, Constitution Revision Commission

KEN MEADE
Assemblyman, 18th District

ALAN ROBBINS
Senator, 22nd District

Rebuttal to Argument in Favor of Proposition 7

Though Proposition 7 streamlines some portions of our State Constitution, all rights enjoyed in the Federal Constitution are enjoyed by California citizens already since the Federal Constitution takes precedence over our State Constitution in all areas where they may conflict.

Because a court in California rules that a portion of the Constitution voted by the People is unconstitutional seems peculiar. The People have a right through their power of the vote to amend the Constitution.

Because a judge at a particular time says a part is unconstitutional does not preclude another judge or court from reversing the previous decision.

The controversial parts of this proposition should be separated from the noncontroversial, technical parts and presented separately for the voters.

A No vote is urged on this proposition.

ROBERT C. CLINE
Assemblyman, 84th District

EXHIBIT #8

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Referred to at pg. 12

BEST AVAILABLE COPY

Argument Against Proposition 7

Though the California Constitution appears to be long, it has been a thorough, workable document. Extensive revisions proposed in the past have been rejected by the People of California.

This proposal will remove the part of the Constitution voted for by the People to protect their right to sell private property to whomever they choose. Though the State Supreme Court invalidated this section, a new Court could reverse that position.

Let's not tamper with this section voted for by a 2-1 margin by the People. Many of the 49 changes proposed are technical and renumbering of existing sections. However, these should be voted separately.

Vote No on this proposition.

ROBERT C. CLINE
Assemblyman, 64th District

Rebuttal to Argument Against Proposition 7

The only argument that the opponents of this measure can present is that the people should keep in the constitution material declared unconstitutional years ago, not just by the California Supreme Court, but also by the United States Supreme Court.

Sounds ridiculous? It is.

California's history shows that its citizens have the capacity to grow. It also points out that we have made mistakes in the past like the internment of our Japanese American citizens and attempts to "keep the Okies out". Yes, we have even placed in our constitution provisions that "no corporation now existing or hereafter formed under the laws of this State shall . . . employ directly or indirectly in any capacity any Chinese or Mongolian" and a denial of the right to vote to all who were not "white male(s)". These provisions are relics of the past and have no place in the document that school children look to as a truthful statement of our fundamental rights as citizens.

Shame on those that appeal to past bigotries to prevent our constitution from being an accurate statement of the fundamental law of California as it is today.

The "no" argument is really a strong argument "for" Proposition 7. If you don't agree, think about it. All the opponent can say is that the proposition is bad because it is the truth and the law.

JUDGE BRUCE W. SUMNER
Chairman, California Constitution Revision Commission

KEN MEADE
Assemblyman, 19th District

ALAN ROBBINS
Senator, 22nd District

EXHIBIT #9

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Referred to at pg. 13

February 14, 1986

Mr. Laurence P. Gill, Clerk
The California Supreme Court
350 McAllister Street, Rm 4050
San Francisco, CA 94102

Dear Mr. Gill:

Regarding Petition Civil No. 24962

Because of the importance of the issue addressed in the above petition the plaintiffs request its merits be adjudicated as soon as reasonably possible.

These acting petitioners will be on a trip from March 5 through March 20, 1986. Therefore, they would like to request a hearing be scheduled for March 31, 1986, in San Francisco, or at the earliest date thereafter as the court may rightfully prescribe.

Respectfully yours

Robert L. Middleton 2-14-1986
Robert L. Middleton dated

Marian S. Middleton 2-14-1986
Marian S. Middleton dated

Plaintiffs Acting
In Propria Persona
211 Coral Court
Pismo Beach, CA 93449
Tele 805-773-5135

S.F. No. 24962

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ROBERT L. MIDDLETON et al., Petitioners,

v.

THE STATE OF CALIFORNIA, Respondent;
ALL MEMBERS OF THE LEGISLATURE et al.,
Real Parties in Interest.

SUPREME COURT
FILED
FEB 25 1985
Lawrence P. Gill, Clerk
DEPUTY

The above entitled matter is transferred to the Court of Appeal, Third Appellate District.

BIRD, C. J.
Chief Justice

COURT OF APPEAL, THIRD APPELLATE DISTRICT

ROBERT L. MIDDLETON and
MARIAN S. MIDDLETON and
all thos similarly situated,
Petitioners,

vs. 3 Civil 25998

THE STATE OF CALIFORNIA,
Respondent,
ALL MEMBERS OF THE LEGISLATURE
Speaker of the Senate,
David Roberti,
Speaker of the Assembly
Willie L. Brown, Jr.,
Chmn.Senate Rev. & Tax Comm.
Daniel Boatwright,
Chrmn.Assembly Rev. & Tax Comm.
Tom Hannigan,
GOVERNOR, STATE OF CALIFORNIA
George Deukmejian,
CALIFORNIA ATTORNEY GENERAL
John Van de Kamp,
THE STATE BAR OF CALIFORNIA
President, David M. Heilbron,

Real Parties in Interest.

Judge: Receipt No:
Nature of Action: Petition for writ of prohibition and mandamus

==========

ROBERT L. MIDDLETON and
MARIAN S. MIDDLETON
211 Coral Court
Pismo Beach, Ca 93449 Petitioners

ATTORNEY GENERAL
By
1515 "K" St., #350
Sacramento, Ca 95814

DAVID ROBERTI
Speaker of the Senate
State Capitol Bldg.
Sacramento, Ca 95814

WILLIE L. BROWN, JR.
Speaker of the Assembly
State Capitol Bldg.
Sacramento, Ca 95814

DANIEL BOATWRIGHT
Senate Revenue and Taxation
Committee

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

ROBERT L. MIDDLETON and
MARIAN S. MIDDLETON and
all thos similarly situated,
Petitioners,
vs.

3 Civil 25998

THE STATE OF CALIFORNIA,
Respondent,
ALL MEMBERS OF THE LEGISLATURE
Speaker of the Senate,
David Roberti,
Speaker of the Assembly
Willie L. Brown, Jr.,
Chmn.Senate Rev. & Tax Comm.
Daniel Boatwright,
Chrmn.Assembly Rev. & Tax Comm.
Tom Hannigan,
GOVERNOR, STATE OF CALIFORNIA
George Deukmejian,
CALIFORNIA ATTORNEY GENERAL
John Van de Kamp,
THE STATE BAR OF CALIFORNIA
President, David M. Heilbron,

Real Parties in Interest.

FILED

MAR - 7 1986

COURT OF APPEAL - THIRD DISTRICT
WILFRIED J. KRAMER, Clerk
BY _____ Deputy

By the Court:

The petition for extraordinary relief in the nature of prohibition and mandamus is denied.

Dated: March 7, 1986

BLEASE, Acting P.J.

ROBERT L. MIDDLETON and
MARIAN S. MIDDLETON
211 Coral Court
Pismo Beach, Ca 93449
Tele (805) 773-5135

Plaintiffs Acting
In Propria Persona

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ROBERT L. MIDDLETON and MARIAN S. MIDDLETON and all those similarly situated Petitioners vs. THE STATE OF THE CALIFORNIA Respondent, ALL MEMBERS OF THE LEGISLATURE Speaker of the Senate, David Roberti Speaker of the Assembly Willie L. Brown, Jr. Chrmn.Senate Rev. & Tax Comm. Daniel Boatwright Chrmn.Assembly Rev.& Tax Comm. Tom Hannigan GOVERNOR, STATE OF CALIFORNIA George Deukmejian CALIFORNIA ATTORNEY GENERAL John K. Van de Kamp THE STATE BAR OF CALIFORNIA President, David M. Heilbron Real Parties in Interest.	No. _____ NOTICE OF APPEAL: FROM THE JUDGMENT OF THE THE THIRD APPELLATE COURT DENYING PLAINTIFFS' PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF PROHIBITION AND MANDAMUS and NOTICE DESIGNATING PAPERS AND RECORDS FOR INCORPORATING IN THE RECORD ON APPEAL and FOR GOOD CAUSE THESE PETITIONERS REQUEST A COURT ORDER WAIVING THE 10 DAY FILING PERIOD ALLOWED BY COURT RULE 28(b) Calif. Rules of Court: Rules 1(a), 4(a), 5(a) and 28(b)

TO THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HERBY GIVEN that Plaintiffs Robert L. Middleton and Marian S. Middleton appeal to the California Supreme Court from a March 7, 1986 action in 3 Civil 25998 in which, without a hearing and without rendering an opinion,

The Third Appellate Court denied these petitioners' Petition For Extraordinary Relief In The Nature of Prohibition and Mandamus.

NOTICE DESIGNATING PAPERS AND RECORDS FOR INCORPORATION IN RECORD ON APPEAL:

1986

Jan. 6 Civil No. S.F. 24962 Petition for extraordinary relief in the nature of prohibition and mandamus, with supporting memorandum of points and authorities filed in the California Supreme Court.

Jan. 6 Plaintiffs' Memorandum #1 to correct minor typing errors filed with Supreme Court. [Corrections Made on New Copies. RLM]

Feb. 18 Plaintiffs' request that a hearing be scheduled on or after March 31, 1986, with reasons, filed with Supreme Court

Feb. 25 Transfer of the above entitled matter to the Court of Appeal, Third Appellate District. BIRD, C.J.

Feb. 26 Refiled petition for extraordinary relief in the nature of prohibition and mandamus, with supporting memorandum of points and authorities in the Third Appellate Court as No. 3 Civil 25998.

Mar. 7 Petition denied by Court of Appeal. BLEASE, Acting P.J.

FOR GOOD CAUSE THESE PETITIONERS REQUEST THE COURT WAIVE THE 10 DAY PERIOD ALLOWED BY COURT RULE 28(b) TO FILE APPEAL FROM THE COURT ACTION IN 3 Civil 25998.

Robert L. Middleton and Marian S. Middleton declare as follows:

1. That your declarants are the acting petitioners in the above entitled case.

2. That The Third Appellate Court's denial was filed on March 7, 1986.

3. That the Petitioners' appeal to the Supreme Court would then have had to be filed on or before March 17, 1986.

4. That these Petitioners were on a previously scheduled sightseeing tour of the southern states during

which it was impossible for them to receive mail and/or to respond to a court's action and had so notified the court. (See Feb. 14 letter from the plaintiffs to the California Supreme Court citing the fact that they would be on a trip from March 5 through March 20, and requesting a hearing to be scheduled on or after March 31, 1986.)

5. That your declarants be given until March 31, 1986 within which to file their appeal to the California Supreme Court.

WHEREFORE, your declarants pray for an order of this court extending the time to and including March 31, 1986 within which they are allowed to file their appeal from the denial of petition by the Third Appellate Court.

We declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of March, 1986, at Pismo Beach, California.

Robert L. Middleton
Robert L. Middleton

Marian S. Middleton
Marian S. Middleton

Plaintiffs Acting
In Propria Persona

BY COURT SO ORDERED

Presiding Justice

JOHN C. ROSS
CHIEF DEPUTY
SAN FRANCISCO

ROBERT F. JOHNSON
CHIEF DEPUTY
LOS ANGELES

OFFICES
SAN FRANCISCO 94102
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LOS ANGELES 90012
3580 WILSHIRE BLVD
213: 736-2902
SACRAMENTO 95814
100 LIBRARY AND COURTS BUILDING
916: 322-5957

OFFICE OF THE CLERK

Supreme Court of California

SAN FRANCISCO, CALIFORNIA

LAURENCE P. GILL, CLERK

March 28, 1986

Robert L. Middleton
211 Coral Court
Pismo Beach, CA 93449

Re: 3 Civil 25998 - Middleton v. State of California

Dear Mr. Middleton:

The application for relief from default and petition for review were presented to the court for its consideration.

The court directed that the petition for review be returned for the reason that it would not grant the permission necessary to allow the untimely filing. Enclosed find a copy of the court's policy statement in this regard. Also enclosed is your check for $ 200.00.

Returned is the original of the petition for review. If you desire return of the additional copies, please notify our San Francisco office within 10 days.

Very truly yours,

LAURENCE P. GILL
Clerk of the Supreme Court

Diane M. McHenry

By: Diane M. McHenry
Deputy Clerk

DM:jrm

Enclosure

cc: Court of Appeal, Third Appellate District
Attorney General, Sacramento
David M. Heilbron